



Appeal Decision

Site visit made on 8 January 2020

by I A Dyer BSc (Eng) MIHT

an Inspector appointed by the Secretary of State

Decision date: 31 January 2020

Appeal Ref: APP/Q3820/W/19/3237681

Northgate House, 115 High Street, Crawley RH10 1FY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Mr P Mattson of Northgate House Sussex Ltd against the decision of Crawley Borough Council.
 - The application Ref CR/2019/0069/PA3, dated 29 January 2019, was refused by notice dated 29 March 2019.
 - The development proposed is application for prior approval under Class O of the GPDO (2015) for conversion of a three-storey office building from B1(a) use to 24 apartments in C3 residential use at Northgate House, 115 High Street, Crawley.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr P Mattson of Northgate House Sussex Ltd against Crawley Borough Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue is the effect of noise from existing businesses on the living conditions of future occupiers.

Reasons

4. The appeal site lies within the town centre of Crawley, on the east side of the High Street. To the south-east, across car parking to the rear of the site, lies an open yard occupied by the Post Office and used as a depot in conjunction with their sorting office. In close proximity to the site are several entertainment and hospitality venues.
5. The existing building has two storeys fronting the High Street, with a three storey element to the rear. Both front and rear facades contain windows.
6. The proposal seeks a determination as to whether Prior Approval is required for a change of use from offices (B1) to residential (C3), creating 24 apartments under Class O of the Town and Country Planning (General Development) (England) Order (2015) (the Order). The proposals are subject to paragraph W of the Order.

7. Paragraph W does not require that the determining authority must have regard to the development plan in reaching a decision. However, relevant parts of the development plan, which are those that relate directly to the issues that are to be considered, are capable of being material considerations despite the absence of the statutory duty placed upon decision makers under Section 38(6) of the Planning and Compulsory Purchase Act 2004.
8. For a development to be permitted under Class O it must satisfy the condition that, before beginning the development, the developer applies to the Local Planning Authority for a determination as to whether the Prior Approval of that authority will be required as to, amongst other things, impacts of noise from commercial premises on the intended occupiers of the development.
9. A Noise Impact Assessment, accompanied by an additional document, "Technical Note – Response to noise objections of Environmental Health Officer", which accompanied the application identify the site as being affected by commercial and traffic noise. The assessment included surveys to assess the noise from the Royal Mail Depot (the depot) and the road fronting the site.
10. The assessment also identifies the potential impact of an adjacent restaurant/nightclub. At the time that the planning application was considered this venue was undergoing refurbishment, and so no detailed data could be collected. However, subsequent to determination of the application additional information has been provided regarding noise from the adjacent businesses.
11. Given the nature of the business carried out from the depot, it operates throughout the night, and will continue to do so, with associated vehicle movements resulting in engine noise and audible warnings. Further, it is likely that the operation of the depot will result in other impact sounds associated with the handling of mail deliveries.
12. The noise generated by the nightclub is complex, coming from various sources associated with the use, both internally and externally generated. The nightclub would operate into the night, at times when future occupiers of the proposal would be relaxing and sleeping. The Council have identified that structural members link the adjacent restaurant and nightclub to the structure on the appeal site, allowing the transmission of noise between the structures.
13. The proposal seeks to mitigate the effect of external noise by improving noise insulation of the building, including the replacement of the windows with units without trickle vents, and a ventilation system. The use of such measures would be likely to be effective in reducing noise within the building in accordance with the recommendations within BS 8233 (2014) Guidance on Sound Insulation and Noise Reduction for Buildings (the noise guidance). However, this would leave future residents without windows that could be opened without allowing the entry of noise.
14. Whilst the reliance upon mechanical ventilation has been accepted in principle by the Council in other locations in Crawley and elsewhere, subject to clearance of a Grampian planning condition. Such systems are becoming more widespread, particularly in urban locations as they combine a means of addressing sustainability objectives with managing the effect of external noise. Both parties have cited appeal decisions in support of their case. However, I have little information to compare the specifics of this site with the other locations in Crawley where development has been wholly reliant upon

mechanical ventilation nor to assess the contextual correlation of the cited appeals. I have, in any case, considered this case on its own merits.

15. The sealing of the building to external noise and permanent closure of all of the windows would leave the future occupants living in a sealed space without access to natural ventilation, creating an oppressive environment. In this case I consider that such a measure would be an excessive way to address the location of the proposal within an existing commercial and entertainment area.
16. There remains dispute between the parties as to whether the effects of noise have been assessed appropriately with particular regard to the specific characteristics of the existing noise, whether the proposed measures would adequately address the issue of impact noise and other sudden disturbances from the depot or the transmission of noise between the structures, or be effective should the internal layout of the nightclub change within the limitations of its existing controls.
17. The nature of the noise from the depot, in the form of sudden sharp noises, and their likely occurrence throughout the night, leads me to the conclusion that, notwithstanding the ability to comply with technical requirements in regard to levels of noise experienced within the building, the noise generated by the depot would be likely to disturb future residents. The generated noise, though occasional, would be particularly disturbing as it would take place at irregular intervals, including during times when the occupants of the proposal are most likely to be trying to sleep.
18. The noise from the nightclub would be from a number of contributing sources, including music, and this music would contain an element of bass frequency noise. Whilst I am satisfied the external sources of noise from the nightclub could be attenuated by the proposed mitigation, I am not satisfied that the transmitted noise passing between the building, with its low frequency elements would not disturb future occupiers, notwithstanding the low levels of transmitted noise.
19. It has been suggested that an acoustic barrier could be installed to reduce the impact of noise generated by the depot. However, whilst there is dispute regarding the effectiveness of the proposed barrier, the proposed structure would be a five metre high solid fence. Such a structure would require planning permission and may prove unacceptable. Given the uncertainty of a practicable solution being found the imposition of a Grampian condition requiring the provision of such a barrier would be unreasonable.
20. It is noted that the depot, entertainment and hospitality venues are lawful uses. However, complaints against them for statutory nuisance would still need to be resolved, even though the residential development would be a subsequent change to the area. The noise generated by the business would not need to exceed the recommended noise levels in the noise guidance to justify a complaint. Thus, complaints from future occupants of the proposal would still need to be addressed by the business and would be likely to result in additional, possibly significant, expenditure.
21. This may jeopardise the future viability of the business. I am mindful of the advice contained in paragraph 182 of the National Planning Policy Framework (2019) (the Framework), which states that "Planning policies and decisions should ensure that new development can be integrated effectively with existing

- businesses”, and that “Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established”.
22. Bringing these matters together, noise levels within the proposal could not be reduced without recourse to mitigation that would result in oppressive living conditions for all future occupiers. Further, I am not satisfied that the proposed mitigation measures, although reducing the noise from external sources associated with the nightclub and routine operation of the depot, would address the issue of sudden, unpredictable noise resultant from the depot’s operation or sound transmission through the structure into the building from the nightclub. Such disturbance is likely to generate complaints regarding the noise from existing uses, with potential to adversely affect their operation.
23. There is potential for the operation and internal layout of the adjacent entertainment venue to change and that the level of noise disturbance that would be experienced from the entertainment venue within the proposed development would also vary. However, there is little evidence before me to demonstrate that such a change will actually take place, or that the effect of noise on the future occupiers of the site would be significantly greater.
24. Whilst there would be noise in the vicinity of the site from late night revellers, the site is located within a town centre where residents would expect a degree of such disturbance.
25. Similarly, the site is adjacent to a road in a busy town centre and residents would expect to experience a degree of steady background traffic noise. In any case, this issue cannot be considered under paragraph W of the Order.
26. I conclude that the noise from the existing businesses would result in significant harm to the living conditions of the future occupiers of 115 High Street.
27. The Council has referred to the Framework, the Noise Policy Statement for England (2010) (the NPSE) and Policy ENV11 of the Crawley Borough Local Plan 2015-2030 (2015) (the Local Plan). Paragraph 127 f) of the Framework seeks to ensure that developments create places which promote health and well-being, with a high standard of amenity for existing and future users. The provisions of Paragraph 182 of the Framework seek to protect the viability of existing businesses from the effects of subsequent development. The NPSE seeks to avoid, mitigate and minimise adverse impacts on health and quality of life and, where possible, contribute to the improvement of health and quality of life through the effective management and control of environmental, neighbour and neighbourhood noise within the context of Government policy on sustainable development. Policy ENV11, amongst other things, seeks to protect people’s quality of life from unacceptable noise impacts by managing the relationship between noise sensitive development and noise sources.
28. Whilst this prior approval appeal has not been determined on the basis of Section 38(6) of the Planning and Compulsory Purchase Act 2004, Paragraphs 127 f) and 182 of the Framework, the NPSE and Policy ENV 11 of the Local Plan are relevant to the planning judgement to be made on this main issue.

Conclusion

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

I Dyer

INSPECTOR