



Appeal Decision

Site visit made on 8 January 2020

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 February 2020

Appeal Ref: APP/G5180/W/19/3237984

70 Queensway, Petts Wood, Orpington BR5 1DH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class O, Paragraph O.2(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Riverland (P.W) Ltd / Berkley Estates Ltd against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/19/01185/RESPA, dated 28 March 2019, was refused by notice dated 20 May 2019.
 - The development proposed is a change of use of first and second floors from Class B1(a) office to Class C3 dwelling houses to form 27 x 1-bedroom flats and 3 x studio flats.
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Decision

1. The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class O, paragraph O.2(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the change of use of first and second floors from Class B1(a) office to Class C3 dwelling houses to form 27 x 1 bedroom flats and 3 x studio flats at 70 Queensway, Petts Wood, Orpington BR5 1DH in accordance with the application Ref DC/19/01185/RESPA, dated 28 March 2019, and the details submitted with it, pursuant to Article 3(1) and Schedule 2, Part 3, Class O, paragraph O.2(1) and subject to the following conditions:
 - 1) No dwelling shall be occupied until the cycle parking (including access lift) and refuse storage facilities shall have been provided in accordance with details shown on drawing titled Scheme proposals ref: 152366-STL-sk026 Rev A. The cycle parking and refuse storage shall be retained as such at all times thereafter.
 - 2) No dwelling shall be occupied until details of soundproofing between the commercial uses and the residential uses have been submitted to and approved in writing by the local planning authority. The approved details shall be implemented in full prior to the first occupation of any dwelling unit and retained in full thereafter.
 - 3) No dwelling shall be occupied until all aspects of the noise mitigation as outlined in Section 8.1 of the submitted Noise Impact Assessment by KR Associates (Report Ref KR06380 v1.2, dated 2 October 2018) have been implemented in full. The noise mitigation scheme shall be retained as such at all times thereafter.

Procedural Matters

2. I have taken the description of development from the Council's Decision Notice as this is a more precise description of the development proposed.
3. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), under Article 3(1) and Schedule 2, Part 3, Class O, paragraph O.2(1) require the local planning authority to assess the proposed development solely on the basis of its transport and highway impacts; contamination and flooding risks; and impacts of noise from commercial premises on the intended occupiers. My determination of this appeal has been made on the same basis.
4. A signed and dated Unilateral Undertaking (UU) was submitted by the appellant following the submission of the appeal and relates to, amongst other things, a contribution towards a car club for use by future residents. The Council has been given the opportunity to comment on the UU. I have considered this further below.

Main Issues

5. The main issues are whether the 1) transport and highways impacts and 2) the impacts of noise from commercial premises on the intended occupiers of the development, are such as to warrant refusal of prior approval under paragraphs O.2(a) and (d), and W(3).

Reasons

Transport and highways impacts

6. The appeal site comprises the first and second floors of a mixed-use building that is predominantly characterised by the ground floor supermarket with two levels of basement parking beneath. The appeal site is situated within Petts Wood Town Centre where there is a range of other commercial uses and there are residential properties in the streets off the high street. To the rear of the site is Petts Wood Railway Station and there are bus stops on Queensway within around 120m of the appeal site. There is no car parking proposed to be provided as part of the development.
7. On my site visit I observed that there is limited long-stay car parking available in the immediate vicinity and there are parking restrictions on many of the surrounding streets. Potential occupants would be aware that no dedicated parking would be provided and are likely to be aware of the parking situation locally prior to taking residence. This is likely to deter future occupants from owning a car, or potential occupants who are car owners from taking residence in the first instance.
8. The Council have commented that considering the Local Plan parking standards, 2011 census data and the make-up of the area, the flats would require parking for 22 cars. They also consider that in outer-London boroughs such as Bromley, there is an increased importance of providing off-street parking. This, they say, is due to a higher reliance on cars given the tendency for longer travelling distances and less frequent levels of public transport provision during off-peak periods.

9. I find that both these suggestions, whilst not without credence, do not give enough recognition to the specific nature of the site's location and the proposed development, in relation to being in an accessible town centre and the intention of providing a car-free development. The development is also likely to be occupied by young singles/couples who may not be so reliant on car ownership. This will partly be due to the site having good access to public transport and being in a town centre with a PTAL rating of 3/4. Therefore, it is in a sustainable location where employment and day to day services can be accessed by a choice of modes of transport other than the car.
10. The Council appear to have given limited weight to the fallback of the appeal site being occupied as B1 office space. Whilst the parking demand of any such reinstatement would be at different times of the day, I consider the transport impacts, due to number of staff, visitors, deliveries etc would be greater, and the parking demand would exceed that of the current proposal.
11. In addition to the statements provided, I have been presented with evidence in the form of parking surveys and other examples of car-free development in outer London locations. The Council dispute the findings of the parking survey due to its timing prior to school holidays. Despite being contrary to advice in the Lambeth methodology, it is unclear to me why the surveys should not carry some weight, particularly as they were undertaken during term time. Whilst there are few long-stay car parking spaces and there are parking restrictions in the area, the survey finds that there is some capacity on Chesham Avenue and Shepperton Road. The Council comment that the scope for a resident to leave their car on street all day within this area is limited, although not impossible. I find that any parking in these locations, or any resulting displacement, would not cause demonstrable harm to highway safety.
12. I accept that there is potential for some residents to choose to have a car. A Unilateral Undertaking (UU), signed and dated 20 December 2019 has been submitted by the appellant. The agreement includes, amongst other things, the provision of a car club vehicle, 3-years membership for eligible residents of the development and £50 credit for all eligible residents of the development. The Council have not commented on the UU. Such a measure, combined with the cycle parking that is proposed, would reduce the highway impact of the development in relation to parking as residents may reasonably, when faced with the parking situation, choose to rely on the car club or cycling as an alternative to owning, and requiring parking for, their own car.
13. The UU also outlines the appellant's willingness to pay a Traffic Regulation Order (TRO) contribution for the provision of a disabled parking space and a car club parking space. It is necessary that I consider this obligation against the three tests set out in the National Planning Policy Framework and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010. I am satisfied that the proposed contribution would be necessary to make the development acceptable in planning terms. Furthermore, it would be directly related, and fairly and reasonably related in scale and kind, to the development proposed. The obligation therefore meets the relevant tests. I have therefore attached weight to this contribution in reaching my decision.
14. Paragraph W10(b) of Part 3 of the GPDO outlines that in determining an application regard should be had to the National Planning Policy Framework (the Framework), so far as is relevant to the subject matter of the prior

approval, as if the application were a planning application. The proposal, in relation to the transport and highways impact of the development, would comply with the Framework which outlines, amongst other things, that development should not have an unacceptable impact on highway safety or have a severe impact on the road network, and should take appropriate opportunities to promote sustainable transport modes given the type of development and its location.

15. In such prior approval cases there is no statutory obligation to have regard to the development plan. Development plan policies may be relevant, but only insofar as they relate to the matters that may be taken into account, which in this instance are highways and transportation. Such policies may be taken into account as a form of evidence.
16. Policies 30 and 32 of the Bromley Local Plan (2019) are cited in the Council's first reason for refusal. The proposal would comply with Policy 32 which outlines that in relation to potential impact of any development on road safety the Council will ensure that it is not significantly adversely affected. The proposal would not provide the parking level that is outlined in Policy 30 which the Council would normally require, however I find that for the reasons outlined above, the conflict with this Policy would not result in unacceptable or severe highways impacts, as required by the Framework, in relation to parking.

Noise impacts

17. The appeal site sits above a mixed-use premises that mainly comprises a supermarket but also includes a beauty salon on the ground floor and a snooker hall on the first floor. These uses constitute commercial premises from which the noise impacts on the intended occupiers of the residential units can be taken into account.
18. The supermarket includes roof-top plant. There is a delivery area for the supermarket to the side of the premises. A Noise Impact Assessment (NIA) (Ref KR06380 v1.2 dated 2 October 2018) was submitted with the application. This report identifies that the dominant commercial noise source is the roof mounted plant and the assessment of noise, in accordance with British Standard 8233:2014, indicates mitigation measures that can be introduced to protect the future occupiers of the dwellings.
19. The Council are of the view that the submitted information does not demonstrate that the noise impacts would be acceptable and/or that suitable mitigation measures can be incorporated into the development. The Council however have not provided any substantive evidence to dispute the findings and recommendations of the NIA. They identify that the report lacks any detailed consideration of delivery noise or 'supermarket activities'.
20. On these matters, the supermarket delivery area is located to the side of the building in a partially enclosed and covered area, where it is unlikely to be in continuous use. The proposed layout of the development also means that there are no windows to proposed residential units on this elevation of the building. The NIA identifies the main noise sources and proposes mitigation measures accordingly. These measures will also serve to mitigate any noise impacts from deliveries. Taking these factors into account I do not consider it is necessary to consider the impact from deliveries any further.

21. In relation to the impact of other activities associated with the supermarket operation, the noise surveys would have captured the noise associated with such activities. Notwithstanding the plant and delivery area, the other supermarket activities are primarily in relation to the comings and goings of staff and customers which I find would not be unreasonable in this commercial setting. Furthermore, there will inevitably be some noise in town centre locations and residents will expect this to be the case.
22. I therefore conclude that subject to the implementation of appropriate mitigation, the impact of noise from commercial premises on the future occupiers of the development would not be unacceptable. It would comply with guidance contained in the Framework which seeks to prevent new development from being adversely affected by unacceptable noise, and avoid noise giving rise to significant adverse impacts on health and the quality of life.

Other Matters

23. A number of representations were submitted to the application. Matters that do not relate to; transport and highway impacts, contamination and flooding risks, and impacts of noise from commercial premises on the intended occupiers cannot be taken into account when considering a proposal under this procedure. Therefore, matters relating to the impact on visual living conditions for existing and future residents, the type of occupants of the units and the intentions of the developer, can not be taken into account.
24. Comment has been made that no recent asbestos survey has been undertaken for the property and that the appellant included a report about other possible sources of contamination. The Council are silent on the need for such a survey. It will be the responsibility of the owner to establish whether asbestos is present within their premises and they have a 'duty of care' to manage such asbestos. The removal of asbestos is covered by legislation from the Health and Safety Executive and it is therefore not necessary to impose a condition requiring such a survey to be undertaken.

Conditions

25. Any planning permission granted under Article 3(1) and Schedule 2, Part 3, Class O is subject to the condition that it must be completed within a period of 3 years starting with the prior approval date and that it is carried out in accordance with the approved details. It is not necessary to repeat these conditions in this decision.
26. Paragraph W.13 allows conditions reasonably related to the subject matter of the prior approval to be imposed. The Council have requested 5 conditions to be imposed in the event that the appeal is allowed. I have considered these in turn below.
27. Firstly, a condition requiring the submission of a Construction and Environmental Management Plan is not necessary as the development is a change of use which primarily consists of internal works. Second and thirdly, conditions requiring the submission of details of refuse storage and cycle parking are not necessary as these details are shown on the plans and are considered to be acceptable. I will impose conditions requiring those elements to be in place prior to occupation to ensure the facilities are available for residents at all times. Fourthly, a condition requiring the establishment of a car

club to serve the development is not necessary as this is covered in the Unilateral Undertaking. Fifthly, a condition requiring soundproofing between the commercial and residential floors is necessary to ensure noise from the commercial premises on the intended occupiers is mitigated. I find the Council's suggested wording 'to achieve reasonable resistance' to be vague and unspecific and therefore require details to be submitted for approval.

28. In addition, a condition is also necessary to ensure that the acoustic insulation and mitigation measures as shown in the submitted details are carried out to ensure noise from the commercial premises on the intended occupiers is mitigated.

Conclusion

29. For the reasons given above, I conclude that the appeal should be allowed and prior approval should be granted.

A M Nilsson

INSPECTOR