



Appeal Decision

Site visit made on 9 June 2020

by Andre Pinto BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 August 2020

Appeal Ref: APP/U5930/W/20/3246234

101 D Blackhorse Lane, Walthamstow E17 6DJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr Stuart Smith of Milton Property Investments Ltd against the decision of the Council of the London Borough of Waltham Forest.
- The application Ref 193438, dated 14 October 2019, was approved on 12 December 2019 and planning permission was granted subject to conditions.
- The development permitted is application for planning permission under Class V, Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 for the use of the building as Light Industrial (Class B1 (c)), General Industrial (Class B2), Storage and Distribution (Class B8).
- The conditions in dispute are Nos 1, 3 and 4 which state that:
 - "1. The development hereby permitted shall begin no later than the expiration of three years from the date of this permission."
 - "3. This permission shall endure for a limited period not exceeding 10 years from the date of this decision, in compliance with Class V, Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015. Prior to the 10-year temporary permission expiring the use hereby permitted shall cease and any development carried out under this permission or other enabling development shall be removed or as otherwise agreed with the Local Planning Authority and thereafter retained as such."
 - "4. a) No development shall take place until details of mitigation measures to show how the development will be constructed/adapted so as to provide sufficient air borne and structure borne sound insulation against internally/externally generated noise and vibration has been submitted to and approved in writing by the Local Planning Authority.
This sound insulation shall ensure that the levels of noise generated from the use(s) hereby approved and any plant installed; as measured within habitable rooms of the nearest residential premises shall be no higher than 35dB(A) from 7am to 11pm and 30dB(A) in bedrooms from 11pm to 7am.
The report shall include all calculations and baseline data, and be set out so that the Local Planning Authority can fully audit the report and critically analyse the content and recommendations.
4 b) The mitigation measures as approved under this condition shall be implemented in their entirety prior to the commencement of the use or first occupation of the development and retained as such thereafter."
- The reasons given for the conditions are:
 - "1. To comply with the provisions of Section 91(1)(a) of the Town and Country Planning Act 1990 (as amended)."
 - "3. to enable the Local Planning Authority to review the suitability of the development in the light of circumstances prevailing at the end of the above period and in the interests of the amenities of the area, in accordance with Policy CS8 of the adopted Waltham Forest Local Plan – Core Strategy (2012) and Policies DM18 and DM32 of the adopted Waltham Forest Local Plan – Development Management Policies (2013)."

4. To protect the amenities of adjoining occupiers and the surrounding area in order to comply with Policy CS13 of the Waltham Forest Local Plan – Core Strategy (2012) and Policies DM24 and DM32 of the Waltham Forest Local Plan – Development Management Policies”.

Decision

1. The appeal is allowed and the planning permission Ref 193438 for application for planning permission under Class V, Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 for the use of the building as Light Industrial (Class B1 (c)), General Industrial (Class B2), Storage and Distribution (Class B8) at 101 D Blackhorse Lane, Walthamstow E17 6DJ granted on 12 December 2019 by the Council of the London Borough of Waltham Forest, is varied by deleting conditions 1, 3 and 4.

Procedural Matters

2. Following the submission of this appeal, it is my understanding from the appellant's Appeal Statement (February 2020) and from the correspondence submitted within Appendix 1 of the same Statement, that the Council and the developer have reached an agreement in relation to condition 1 and condition 3 and that the Council no longer wishes to impose these conditions. I have therefore dealt with the appeal on this basis.
3. Condition 4 relates to the need to demonstrate how the development would be constructed/adapted so as to provide sound insulation against internally/externally generated noise and vibration as to ensure that the levels are no higher than 35dB(A) from 7am to 11pm in habitable rooms and 30dB(A) in bedrooms from 11pm to 7am.

Main Issue

4. Therefore, the main issue is the effect of the removal of condition 4 on the living conditions of the occupiers of adjoining properties and the surrounding area, particularly in regard to noise.

Reasons

5. Condition 4 aims to protect the living conditions of adjoining occupiers and the surrounding area and, considering the type of uses proposed, it is likely that significant levels of noise would be generated by the day-to-day operation of the site which might impact the living conditions of adjoining occupiers.
6. The appeal site is located in an area undergoing a significant amount of change, from a more industrial uses to an increasingly more mixed-use area with new residential developments proposed to be built in the vicinity of the appeal site along the existing Victorian housing. Nevertheless, the area immediately surrounding the appeal site remains mostly industrial in character.
7. The unit subject of this appeal, Unit D, is surrounded on both sides by other similar units part of the Forest Estate. On the opposite side of Blackhorse Lane is a petrol station and next to it, to the north, is another estate, Highams Lodge, which judging from the external appearance of the units appears to include solely employment generating uses. To the south, there is a vacant undeveloped site, which, based on the information submitted by the Council includes a substantial amount of residential use.

8. The Council's Environmental Health service was consulted on the application and recommended a condition be imposed to protect the living conditions of neighbouring occupiers. Considering the wording and the reasons given for Condition 4, the Council's main objective is to protect the living conditions of occupiers of nearby residential units. Nevertheless, it is not clear from the evidence presented how the current proposal, particularly considering its surrounding context, would meaningfully affect the health and well-being of occupiers of nearby residential units.
9. It is also unclear how the appellant would secure access to the nearest residential properties to check noise levels, given that these are in private ownership. Furthermore, if the Council's plans for development in the area are successful, the nearest residential property to the appeal site would likely change through time, therefore changing the level of insulation the appellant would be required to provide.
10. Policy DM24 of the Waltham Forest Local Plan – Development Management Policies (2013) (the DM Plan) states that noise sensitive uses, such as residential, should be located away from major sources of noise pollution and vibration, unless appropriate mitigation can be provided. It also states that noisy new developments should normally be located away from noise sensitive uses and should demonstrate that there would be no cumulative increase in noise pollution to sensitive receptors.
11. Nevertheless, considering the nature of the proposed development, the previous and proposed site use, the site's location within an established Strategic Industrial Location and the apparent use of other sites in close proximity to the appeal site, I do not find that Condition 4 would significantly alter the level and nature of noise that sensitive receptors would potentially be exposed to.
12. Accordingly, I conclude that the proposed Condition 4 is not reasonable or necessary to ensure that the development is not inappropriate in terms of the National Planning Policy Framework requirements or those of Policy CS13 of the Waltham Forest Core Strategy (2012) (the CS) which states that new developments are required to meet appropriate environmental standards that minimise noise pollution, Policies DM24 and DM32 of the DM Plan which seeks to improve the health and well-being of Waltham Forest residents and maintain the level of amenities enjoyed by existing occupants.

Conditions

13. I have deleted the disputed conditions 1, 3 and 4 as indicated above.
14. The Planning Practice Guidance indicates that, to assist with clarity, decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. In this case, it is the conditions attached to the 12 December 2019 permission which remain relevant.
15. I have, therefore, imposed all of the other conditions attached to the 12 December 2019 permission, which, in the case of this appeal is only one condition as the Council has agreed with the appellant it no longer wishes to impose Condition 1 and Condition 3 to the present proposal.

Conclusion

16. For the reasons given above, I conclude that the appeal should be allowed and planning permission granted, with Condition 1, Condition 3 and Condition 4 removed.

Andre Pinto

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the approved plans/documents and thereafter maintained as such for the lifetime of the development:

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End of schedule