



Appeal Decision

Site visit made on 22 July 2020

by Mr M Brooker DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 August 2020

Appeal Ref: APP/M4510/W/20/3249882

50 Clayton Street West, Newcastle upon Tyne NE1 4EX

- 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 Sukhwinder Dhillon against the decision of Newcastle-upon-Tyne City Council.
 - The application Ref 2019/1071/01/DET, dated 24 June 2019, was refused by notice dated 26 February 2020.
 - The development proposed is described as "refurbishment and internal alteration of existing flats to form serviced apartments with replacement of existing front elevation upvc windows and cladding panels with new matching versions".
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Sukhwinder Dhillon against Newcastle-upon-Tyne City Council. This application is the subject of a separate Decision.

Procedural Matter

3. In the course of determining the application there has been some discussion, and continues to be disagreement, between the parties as to the correct lawful use of the upper floors of the property, specifically whether or not they are residential flats. The lawfulness or otherwise of the use of the upper floors of the property for residential occupation is not a matter for me to determine in the context of an appeal made under section 78 of the Town and Country Planning Act 1990. It is open to the appellant to apply to have the matter determined under sections 191 or 192 of the Act. Any such application would be unaffected by my determination of this appeal.
4. Since the determination of the application by the Council the saved policies of the UDP have been replaced by those of the Development and Allocations Plan. The appellant has had the opportunity to provide comments in the course of the appeal process.

Main Issues

5. The main issues are the effect of the proposed development on:
 - i) The living conditions of future occupiers with particular regards to noise and disturbance from neighbouring commercial uses.

- ii) Whether or not the proposed development would provide adequate storage facilities for refuse.

Reasons

Living Conditions

6. I saw at the site visit, and it is clear from the submitted evidence, that the appeal property is in an area that has a key night-time economy function with particular regards to the surrounding drinking establishments, hot food takeaways and other similar businesses. Consequently, significant night-time noise in particular is generated, this is not at dispute between the parties.
7. Paragraph 182 of the National Planning Policy Framework (the Framework) seeks to ensure that new development can be effectively integrated with existing businesses and community facilities, and that such businesses should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Paragraph 182 further states that where the operation of an existing business would have a significant effect on new development nearby, the applicant/appellant should be required to provide suitable mitigation as part of the development.
8. The appellant's Acoustic Report, dated 21 November 2019, identifies that noise mitigation measures described by the report as being "quite onerous" would be required to bring internal noise levels down to acceptable levels and thus not result in a significant adverse effect on the living conditions of future occupiers.
9. In this regard, the report refers to mitigation measures including special glazing and, because it is necessary to have the windows closed for them to perform their noise mitigation role, mechanical ventilation options. These are significant measures that in themselves would affect living conditions of future occupiers, particularly with regards the need to keep windows shut to achieve an acceptable internal noise level.
10. In support of the appeal, the appellant has referred to a condition that would require the proposed development to achieve the required lowered internal noise level and a number of planning applications¹ where such a condition was used. I have not been provided with all of the details of these other cases that have used this condition and, in any event, I have determined the appeal on its own merits.
11. I note that the Council has not included such a condition in the list of suggested conditions that were provided as part of their statement and furthermore, it may be that such a condition would not comply with the tests set out in the Planning Practice Guidance.
12. The appellant suggests that the limited-term occupants of the proposed serviced apartments would be unlikely to complain to the Council with regards noise. Regardless of whether or not this may be accurate, I have no substantive evidence before me that would lead me to conclude that the future occupiers, albeit of undefined "limited-term", should be afforded a lower level of protection from noise and disturbance than permanent residents.

¹ 2019/0768/01/DET; 2018/0846/01/DET; 2018/0887/01/DET; 18/00229/NRE & 2018/1336/01/DET

13. The resulting apartments would be a compact form of development without living accommodation separate from the en-suit bedrooms where it would not be possible to open the windows without suffering from significant adverse noise impacts.
14. The Framework is explicit that existing businesses should not be unreasonably restricted by development permitted after they were established. The ability to open the windows would, therefore, as noted in the appellant's Acoustic Report, fatally undermine the effectiveness of the proposed mitigation scheme.
15. In these circumstances, regardless of whether the enhanced glazing would result in an acceptable internal noise climate and suitable living conditions for the future occupiers, the mitigation proposed is compromised by its reliance on the actions of a third party, namely the future occupiers, which is beyond the control of either the appellant or the Council, and, consequently, the proposal would not suitably address the effect of noise from nearby commercial premises on the future occupiers of the proposed development.
16. Alternatively, if the windows were to be fixed shut this would leave the future occupiers entirely reliant on mechanical ventilation and this too would significantly impact upon the living conditions of future occupiers.
17. On the basis of the evidence before me, I find that it has not been demonstrated that the proposed development would provide acceptable living conditions for future residents with particular regards to noise and disturbance from neighbouring commercial uses. Consequently, the proposed development is contrary to policies CS14 and CS15 of the Core Strategy and Policies DM23 and DM24 of the Development and Allocations Plan and the Framework that amongst other matters seek to protect the living conditions of future occupiers.

Refuse Storage

18. The appellant identifies that the proposed development would consist of serviced apartments and as such a chambermaid/caretaker would have responsibility for refuse, rather than the occupiers of the individual flats.
19. The submitted plans show, and the appellant states that the bin store could accommodate 2, 240 litre bins to serve the 3 two-bedroom apartments and office space, to include recycling and nonrecycling waste streams. The appellant also refers to potential other bin stores within the property but these are not shown on the submitted plans.
20. The appellant notes the absence of kitchens in the proposed apartments, suggesting that there will therefore be a reduced volume of waste generated by the occupiers. Furthermore, the appellant suggests that the member of staff could remove some refuse from the site to be disposed of elsewhere, though no further details are provided in this regard.
21. Furthermore, the appellant asserts that a condition could be attached to any permission resulting from this appeal requiring the provision of additional refuse bins but on the basis of the evidence before me it is not clear where additional refuse storage would be created.
22. I therefore find that the proposed refuse store is small for the number of bed spaces that would be created in the proposed development and that the

irregular shape of the refuse store as shown on the submitted plans would mean that not all of the bins would be accessible all of the time.

23. As such, it has not been demonstrated that the proposed development has provided adequate refuse storage facilities to meet the needs of future occupiers. The proposed development is therefore contrary to CS policies CS13 and CS15, and DM20 of the Development and Allocations Plan that amongst other matters seek to ensure appropriate facilities are provided.

Other Matters

1. That the proposed development would result in the refurbishment of a currently vacant property, making use of an existing previously developed site that is currently of a rundown appearance and thus is in accordance with some policies of the Development Plan, is a material consideration that weighs in favour of the appeal proposal. However, these benefits do not outweigh the harm that I have identified previously.
2. The appellant asserts that the upper two floors of the property are under a lawful Use Class C3 (Dwelling House) and as could be "refurbished, reopened and reused under permanent C3 residential occupation" without recourse to further planning permission and as such the appellant argues that a fallback position exists. In this regard the appellant has submitted photographs of the interior of the property and some other limited evidence to support this assertion.
3. The Council's report identifies that "unlawful residential use appears to have taken place at times over the property's history". This is an area of clear disagreement between the parties. As referred to previously, this is not a matter for this appeal to resolve. In any event, no planning permission or Certificate of Lawfulness is before me regarding this matter and the evidence submitted by the appellant does not persuade me that there is a greater than theoretical possibility that the development described could take place. As such, I afford this matter little weight and as such it does not outweigh the harm I have previously identified.

Conclusion

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

Mark Brooker

INSPECTOR