



Appeal Decision

Site visit made on 17 August 2020

by Andrew Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 September 2020

Appeal Ref: APP/Y0435/W/20/3252160

Unit 24 Walker Avenue, Wolverton Mill, Milton Keynes MK12 5TW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 3, Class O of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Aron Wajnstock against the decision of Milton Keynes Council.
 - The application Ref 19/03272/PANB1C, dated 26 November 2019, was refused by notice dated 28 February 2020.
 - The development proposed is change of use of a building from Office Use (Class B1(a)) to 7no residential units (Class C3).
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Decision

1. The appeal is allowed and prior approval is granted under the provisions of Schedule 2, Part 3, Class O of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) for the change of use of a building from Office Use (Class B1(a)) to 7no residential units (Class C3) at Unit 24 Walker Avenue, Wolverton Mill, Milton Keynes MK12 5TW, in accordance with the details submitted pursuant to Schedule 2, Part 3, Class O of the GPDO through application Ref 19/03272/PANB1C, dated 26 November 2019. The approval is subject to the condition that the development must be completed within a period of 3 years from the date of this decision in accordance with Paragraph O.2(2) of the GPDO and subject to the additional following conditions:
 - 1) Prior to the first occupation of the development hereby permitted, a scheme of noise mitigation, which shall include full details of (a) ventilation system(s) to be installed, shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented in full prior to the first occupation of the development and maintained at all times thereafter.
 - 2) Prior to the first occupation of the development hereby permitted, detailed floor plans for each residential unit shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details.

Procedural Matters

2. I have used the site address as it appears on both the Council's Decision Notice and the appeal form, as opposed to as stated on the application form. This is because it is clear and full and offers no doubt as regards the location of the

site under consideration. I am content that no party with an interest in this appeal is prejudiced by me taking this approach.

3. The Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020 came into force on 1 August 2020, which provides amendments to Schedule 2, Part 3, Class O of the GPDO. Indeed, a requirement has been introduced for developers to apply for a determination as to whether prior approval will be required as regards the provision of adequate natural light to all habitable rooms. The main parties to this appeal have been given the opportunity to make observations and I have taken any comments received into account in my determination of the appeal.

Main Issue

4. The main issue is whether or not impacts of noise from commercial premises on the intended occupiers of the development would make the appeal property unsuitable for residential use.

Reasons

5. The provisions of Schedule 2, Part 3, Class O of the GPDO require the Local Planning Authority to assess the proposed development based on a number of different matters, as set out under paragraph O.2 of the GPDO. The Council's reason for refusal confirms that the sole matter in contention when they determined the application was whether or not the impact on future occupiers from noise of commercial premises would be unacceptable. I shall consider the proposal on this basis. Indeed, I have no reason to consider that the proposal fails to comply with any provision set out under paragraph O.1 of the GPDO.
6. The appeal property makes up part of a linear row of commercial units that comprise part of a wider complex of such units (the estate) that are for a large extent used for office purposes. A shared vehicular access runs parallel to the southwestern frontage of the row that contains the appeal property. It is intended that the seven proposed flats be set out across the ground, first and second floor levels of the property.
7. During my inspection of the estate, I did not observe or experience any particularly noisy commercial or industrial activities taking place. Indeed, such operations would not normally be anticipated to occur at an estate predominated by office-type uses. Although a gentle hum of distant traffic noise was audible, I experienced a somewhat sedate and quiet noise environment to exist at and around the site. Condensers affixed to the appeal building, which would have served (a) past active commercial use(s) of the premises, were not operating and I observed condensing plant/equipment in the locality to be somewhat limited in extent and, where operating, quiet running.
8. Whilst I did not witness any deliveries or collections take place during my inspection, I acknowledge the potential for delivery vehicles to serve commercial units that exist in proximity to the appeal site. Nevertheless, such movements and their potential to create noise would realistically be modest. This is particularly given the relatively limited number of businesses directly served by the same shared vehicular access that runs the site's southwestern frontage.

9. An Environmental Noise Assessment (revised and dated 5 February 2020) (the ENA) was submitted at application stage with the intention of addressing possible noise from commercial operations in the locality. This involved survey work consisting of hourly measurements being taken from the appeal building's southwestern façade over a 24-hour period. The measurements recorded indicate that levels of external environmental noise (during both daytime and night-time hours), whilst not excessive, were high enough to warrant the use of normally closed windows to achieve guideline background noise levels for habitable rooms. A ventilation system or systems would thus be required to mitigate the impacts of noise. This is acknowledged by the appellant.
10. The Council's Environmental Health Officer has suggested that a BS4142 assessment be carried out, which is a method of specifically assessing the impact of existing industrial/commercial sound sources. In response, it has been suggested through the ENA that there are no industrial or commercial sources of noise that warrant assessment under BS4142. The survey results that have been collected do not indicate a regularly varying or erratic local noise environment. In the absence of significant local commercial noise sources, I am content that a suitable and robust survey method has been followed.
11. I acknowledge that the implications of the Covid-19 pandemic would likely have had an influence upon my on-site experiences. However, having considered all the evidence that is before me and factored in my own observations, I am content that the site's location would not be excessively noisy even should the estate operate at its normal/full capacity. Nevertheless, commercial noise sources would still make a contribution to the local noise environment. A noise mitigation scheme would thus be reasonably related to the prior approval's subject matter and can be secured via condition in the interests of mitigating the impacts of noise upon the scheme's future occupiers.
12. For the avoidance of doubt, I do not consider that the need for mitigation in a noise context renders the site unsuitable for residential use. Indeed, I have found the appeal building's location to not be excessively noisy. A simple and easily achievable scheme of mitigation would be envisaged and, notwithstanding the intended provision of ventilation measures, the choice to periodically open windows would be anticipated to represent a realistic option for future occupiers (should they so desire).
13. For the above reasons, I conclude that the impacts of noise from commercial premises on the intended occupiers of the development would not make the appeal property unsuitable for residential use.

Other Matters

14. With respect to the transport and highway impacts of the development, I am satisfied that the proposal does not raise undue capacity or safety concerns. Indeed, a specified area within a car park that serves the estate has been earmarked for use by the scheme's future residents. Vehicular movements along the shared access road that serves the appeal site, which are realistically fairly limited in number currently, would not be expected to increase to any significant degree as a result of the proposal's implementation.
15. A requirement to apply for a determination as to whether prior approval will be required as to the provision of adequate natural light to all habitable rooms was

only introduced on 1 August 2020 after the submission of the appellant's original application and this subsequent appeal. Nevertheless, the legislation specifies that before beginning the development a developer must apply for a determination. I thus consider this newly introduced provision of Class O to apply here.

16. The proposed floor plans that have been submitted for consideration contain confirmation of the extent of each flat rather than of specifically intended internal layouts. Whilst the appeal building is served by an array of glazed openings to both its front and rear elevations, two of the proposed flats at first floor level would be enclosed by a pitched roof to the rear (northeast) that currently contains a limited number of small rooflights. The appellant has indicated that non-habitable areas/rooms could be positioned to the rear areas of these units. Indeed, other front-positioned areas would be served by good standards of natural light. Whilst I am satisfied that it would be possible to provide adequate natural light to all habitable rooms, in order to provide full assurances, it would be reasonable and necessary to secure final detailed floor plans via condition in the event the appeal be successful.
17. I have noted objections/concerns raised by interested parties with respect to matters including the employment designation of the area, the anticipated effect upon the estate's image, an observed shortage of small business units, a potential failure to meet lifetime home standards, the potential for instances of crime to occur, a lack of refuse collections and the potential effects of noise from future residential occupation upon existing employees at the estate. However, in the case of this prior approval scheme, my considerations are necessarily limited to the provisions of Schedule 2, Part 3, Class O of the GPDO and, more specifically, the various conditions/subject matters listed under paragraph O.2.

Conditions

18. Paragraph W (13) under Schedule 2, Part 3 of the GPDO allows conditions to be imposed that are reasonably related to the subject matter of the prior approval. In this instance, as discussed in my reasoning above, a scheme of noise mitigation would be reasonable and necessary to secure in the interests of mitigating the impacts of noise from commercial premises upon the intended occupiers of the development. Furthermore, detailed floor plans would be reasonable and necessary to secure in the interests of attaining full assurances that adequate natural light would be provided in all habitable rooms. Both main parties to this appeal have had the opportunity to make comments upon conditions being imposed for these purposes and I have considered any observations received accordingly.

Conclusion

19. For the reasons set out above, the appeal is allowed and prior approval is granted.

Andrew Smith

INSPECTOR