



Appeal Decision

Site visit made on 18 August 2020

by David Carter BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 September 2020

Appeal Ref: APP/P4605/W/20/3252847

32 Hylton Street, Birmingham B18 6HN

- 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 T Hussain c/o Collins & Coward against the decision of Birmingham City Council.
 - The application Ref 2020/00548/PA, dated 20 January 2020, was refused by notice dated 17 March 2020.
 - The development proposed is prior approval under Class PA Change of Use from light industrial (Class B1(c)) to 6 residential units (Use Class 3C).
-

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr T Hussain c/o Collins & Coward against Birmingham City Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The description of the development above is as set out in both the Council's decision notice and by the appellant on the appeal form. This more accurately describes the proposed development than that set out on the appeal form.
4. The appeal proposal is a resubmission of an earlier scheme (2019/08046/PA) that was for the same proposal, but that application did not contain evidence relating to contamination and noise.
5. The appeal site lies within the Jewellery Quarter Conservation Area, a designated heritage asset. It also lies adjacent to/ nearby Grade 2 Listed Buildings, including the adjacent industrial buildings at Nos 27-31 which are all recognised as designated heritage assets. Key Hill Cemetery lies to the rear of the appeal property and this is designated as a Park and Garden of Special Historic Interest. However, since the matters raised by this proposal do not include amenity, siting or location, or design and external appearance there is no requirement for heritage to be considered further.

Main Issues

6. The Council has confirmed that the proposed development falls within scope of Class PA, Part 3 Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). In order to

benefit from these provisions, the proposal needs to comply with certain conditions. In particular, paragraph PA.2. of the GPDO requires the developer to apply to the local planning authority for a determination as to whether the prior approval of the authority will be required for amongst other things, contamination risks in relation to the building and also whether the Council considers the building to which the development relates is within an area that is important for providing industrial services or storage or distribution services or a mix of those service and whether the introduction of, or an increase in, a residential use of premises in the area would have an adverse impact on the sustainability of the provision of those services.

7. Accordingly, the main issues for this appeal are whether:
- (i) potential contamination precludes residential conversion and,
 - (ii) the noise sensitivity of the appeal proposal would affect the sustainability of nearby industrial and commercial uses.

Reasons

Contamination

8. The appeal site is located within an established industrial/commercial area concentrating on jewellery trades and part of a wider area known as the Jewellery Quarter within the north-west quadrant of Birmingham City Centre. As such, the area has a legacy of industrial-related activities dating back many years.
9. With regard to contamination risk, a report entitled 'Environmental Desk Study and Preliminary Risk Assessment' prepared by Apple Environmental (January 2020) has been submitted by the appellant. This report concentrates on the potential for contamination beneath the building arising from previous uses of the land prior to construction of the appeal property as well as the possibility of contamination of the ground arising from the industrial use of the building until it was vacated.
10. Since the appeal proposal does not require extensive groundworks or include any proposals for soft landscaping, the modelling has identified some risk which, it is suggested, could be dealt with in a construction method statement coupled with a precautionary approach should excavations encounter contamination.
11. The appellant also refers to an appeal decision on a site known as Turpins Yard in the London Borough of Brent (APP/T5150/W/17/3181861). While I am not familiar with the background and detail of this case the key point is that the Inspector allowed the appeal subject to a condition dealing with potential land contamination matters, suggesting that a similar approach could be taken on the appeal proposal.
12. On that point, I agree, but in this case the outstanding matter identified by the Council's Environmental Health Officer is the potential for the industrial processes which have taken place at the appeal property for more than a century leading to contamination of the building fabric itself. While this possibility is mentioned in the study report there is no further analysis. If this were to be the case, then residual contamination could put the well-being of future residents of the proposed apartments into doubt.

13. While internal works following the termination of the previous use have been carried out, they were not completed. They may not have been related to the current proposal but a consequence of them is that they could be disguising potentially hazardous contamination within the fabric of the building.
14. Since the Apple Environmental report was a desk study which concentrated on ground contamination, there is no survey work or other evidence on which to conclude that the proposed development would be free from such risks. Accordingly, I find that reasonable outstanding concerns relating to potential contamination risks in relation to the fabric of the appeal property remain and therefore would not comply with paragraph PA.2.-(1)(b)(ii) under Schedule 2 Part 3 Class PA of the Town and Country Planning (General Permitted Development) Order 2015 (as amended).

Sustainability of nearby industrial and commercial uses

15. Residential development is a noise sensitive use and the appeal proposal is located within an established industrial and commercial area. A significant amount of residential development has occurred in parts of the Jewellery Quarter and there is pressure for further housing. Notwithstanding this, very little residential development has occurred in Hylton Street which remains in predominantly industrial and commercial uses. From the evidence, records suggest there are a very small number of dwellings on Hylton Street which, according to the Council are live-work units. Therefore, the appeal proposal for 6 additional dwellings would represent a significant intensification of residential use in the immediate locality.
16. It follows that the potential for complaints from future occupiers to disrupt the operation of surrounding businesses could be a real possibility. There is also no suggestion of any current restrictions on the operating hours of nearby businesses, so it is possible that noise nuisance could occur at any time.
17. In order to address noise sensitivity, the appellant has submitted an 'Acoustic Design Statement Technical Report' by Sound Solutions Consultants (November 2019). The recording of noise levels took place outside the frontage and to the rear of the appeal property. Most of the noise that was recorded appeared to be from traffic and there does not appear to have been any specific investigation to identify or assess the nature of nearby industrial processes or operations as part of the survey. The Sound Solutions report concludes that the intensity of noise is at lower levels and, subject to design solutions over the specification of glazing and ventilation, would enable the residential development to proceed.
18. I have several misgivings on this matter. The appeal site is located within an area known as the Golden Triangle, a core industrial area within the Jewellery Quarter providing high density accommodation enabling this specialised sector to co-exist cheek-by-jowl. The Character Appraisal and Management Plan (adopted as Supplementary Planning Guidance in 2002) highlights that it is within this area that most of the Jewellery firms are located. Pressures for residential development in the industrial core are highlighted as a serious threat to its traditional character and Policy 2.2 of the Management Plan resists residential development through conversion of existing buildings or new build in the Golden Triangle.

19. While I appreciate that the Class B1(c) refers to processes that can be carried out in a residential area, the appeal site is not located in such an area. The circumstances of the appeal property are that some of the walls are shared with adjacent industrial properties. While it might be that noise issues were not recorded over the 3-day survey period, that does not confirm with sufficient certainty they might not become an issue at other times, days or, over the longer term.
20. Accordingly, it would appear that the proposed change of use could adversely impact on the sustainability of businesses in the area. Additionally, the loss of the appeal property from industrial use could encourage further residential proposals to come forward, potentially further undermining the economic sustainability of the area.
21. In relation to Sound Solutions proposals for glazing and ventilation, the consultants acknowledge that the Council would not support windows to be closed or for other means of ventilation in order to mitigate noise from industrial or commercial uses. By specifying a requirement for mechanical ventilation, the suitability and compatibility of the appeal proposal would be further brought into question.
22. Taking these factors into account, I find that the appeal proposal would have a harmful impact on the operation of existing businesses and the sustainability of the provision of these services and therefore would not comply with paragraph PA.2.-(1)(b)(iv) under Schedule 2 Part 3 Class PA of the Town and Country Planning (General Permitted Development) Order 2015 (as amended).

Conclusion

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

David Carter

INSPECTOR