



Appeal Decision

Site visit made on 15 September 2020

by Bhupinder Thandi BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 October 2020

Appeal Ref: APP/B0230/W/20/3253139

Tiber House and Tivoli House, Wigmore Centre, Wigmore Park, Luton LU2 9XG

- 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 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Paul Richards - Tiber Properties Ltd against the decision of Luton Council.
 - The application Ref 19/01278/COM, dated 26 September 2019, was refused by notice dated 26 November 2019.
 - The development proposed is change of use from B1 Office use to 22 residential apartments. No changes to external fenestration.
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Decision

1. The appeal is allowed and approval is granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the change of use from B1 Office use to 22 residential apartments. No changes to external fenestration at Tiber House and Tivoli House, Wigmore Centre, Wigmore Park, Luton LU2 9XG, in accordance with application 19/01278/COM, made on 26 September 2019, and the details submitted with it subject to the following condition:
 - 1) Development shall not take place until a scheme for protecting the proposed dwellings from noise from the neighbouring commercial premises shall have been submitted to and approved in writing by the local planning authority. All works which form part of the scheme shall be completed before any part of the residential development is occupied and retained thereafter for the lifetime of the development.

Main Issue

2. The main issue in this appeal is whether the proposed development would be granted planning permission by Article 3(1) and Schedule 2, Class O of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (GDPO) with particular regard to the requirements of paragraph O.2(d) in respect of the impacts of noise from commercial premises on the intended occupiers of the development.

Reasons

3. Article 3, Schedule 2, Part 3, Class O of the GPDO permits development consisting of a change of use of a building and any land within its curtilage from an office to a dwellinghouse.
4. Paragraph O.2(1) sets out that development is permitted subject to the condition that before beginning the development, the developer must apply to the local planning authority for determination as to whether prior approval is required in respect of a number of criteria including O.2(d) impacts of noise from commercial premises on the intended occupiers of the development.
5. The appeal property is located within the Wigmore District Centre. The building accommodates daytime and evening uses including a health centre, gymnasium, supermarket, hot food takeaway, public house and restaurant. A large car park is provided in front of the building with further parking and a service yard located to the rear. Located opposite is a large retail supermarket and petrol filling station and to the rear are further office buildings.
6. The proposed development involves the change of use of part of the first floor to residential use. The Council have indicated that the noise impact from commercial uses at the front of the building could be controlled and mitigated but not the noise from the service yard which would expose future occupiers to unacceptable noise and disturbance.
7. The appellant has submitted a Noise Impact Assessment (NIA). The NIA indicates that the main source of noise is from road traffic although there is underlying noise from kitchen extraction systems, condenser units and the nearby service yard.
8. I acknowledge that the commercial noise from the service yard is likely to be more unpredictable and impulsive making it more noticeable to occupants. However, based on the evidence deliveries take place for short periods of time and would not take place during early mornings or late at night thereby limiting the risk of disturbance.
9. The NIA concludes that without mitigation, future occupants would on occasion be subject to unacceptable levels of noise mainly from deliveries taking place in the rear service yard, but with upgrades to the glazing, upgrades to the insulation between the proposal and existing commercial uses and the introduction of a mechanical ventilation and heat recovery system (MVHR) acceptable acoustic conditions could be achieved.
10. The potential for noise disturbance could result in a reliance on the MVHR system. However, there is no substantive evidence to indicate that a reliance on the MVHR system would be harmful to the living conditions of future occupants. Moreover, occupants would have the ability to choose between opening windows and using the MVHR to control noise and ventilation.
11. Whilst located within a busy district centre the proposed development would successfully integrate with existing businesses and, in my judgement, future occupiers would benefit from satisfactory living conditions.
12. I therefore conclude that the impact of noise from commercial premises would not harm the living conditions of the intended occupiers of the development. The proposal thus meets criterion (d) of paragraph O.2.

Conditions

13. Paragraph W(13) of the GPDO allows conditions to be imposed that are reasonably related to the subject matter of the prior approval. I have considered the conditions suggested by the Council in light of the National Planning Policy Framework (the Framework) and the Planning Practice Guidance (PPG). In the interests of precision, clarity and brevity I have undertaken some rationalisation of the conditions suggested.
14. Paragraph O.2(2) of the GDPO specifies that development under Class O must be completed within a period of 3 years starting with the prior approval date, so it is not necessary to impose a separate time limit condition. It is also not necessary to impose a condition restricting the use to C3 use as this is established by Class O of the GDPO.
15. In the interests of ensuring satisfactory living conditions in respect of noise it is necessary to impose a condition for a scheme to upgrade the building.

Conclusion

16. For the reasons given above, I conclude that the appeal is allowed and prior approval is granted.

B Thandi

INSPECTOR