



Appeal Decision

Site Visit made on 12 January 2021

by S J Lee BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 February 2021

Appeal Ref: APP/Q0505/W/20/3258197

First Floor, 163-167 Mill Road, Cambridge CB1 3AN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a 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 M Basra of Moor Park Capital Ltd against the decision of Cambridge City Council.
 - The application Ref 20/02057/PRI030, dated 18 March 2020, was refused by notice dated 11 June 2020.
 - The development proposed is prior Approval notification of proposed change of use from B1(a) (offices) to Class C3 (dwellinghouses) to 4 flats.
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Decision

1. The appeal is dismissed.

Preliminary Matters and Main Issue

2. Since the refusal of this application the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 reclassified Class B1 to Class E. The regulations include transitional provisions retaining the effect of permitted development rights based on the classes that were in place prior to 1 September 2020. The changes do not, therefore, change the basis for the determination of this appeal.
3. Schedule 2, Part 3, Class O of the Town and Country (General Permitted Development) (England) Order 2015 (GPDO) permits the change of use from Class B1a (offices) to Class C3 (dwelling houses) subject to various limitations and conditions. The Council raises no concerns in relation to any of these, other than the impact of noise from commercial premises on the intended occupiers of the development.
4. The main issue therefore is the effect of the development on the living conditions of future occupiers, with particular regard to noise and disturbance.

Reasons

5. The appeal relates to vacant office space above a Tesco convenience store. The site is located within a high street, where there are a number of shops on either side of the main road. Even in the current circumstances of the COVID-19 pandemic, there was still a reasonable degree of activity taking place on the street at the time of my visit.

6. The appellant's Noise Assessment (NA) identified the most significant sources of noise from the business as equipment near to the open front doors, the rear louvre, breakout from the store itself through the floor and from deliveries. The assessment also concluded that all but noise from deliveries are likely to have a low impact.
7. Deliveries ostensibly currently take place at the front of the store. The NA estimates that this activity would lead to an increase over background noise of around 7dB. BS4142:2014 suggests this would be indicative of an 'adverse impact'. If deliveries were to take place at the rear, the NA suggests this could lead to an increase of around 16dB. Using the same British Standards, this would be indicative of a 'significant adverse impact'.
8. The NA finally concluded that when the effect of mitigation from windows and walls are taken into account, the noise levels in habitable rooms would be around 8dB lower than the 'desirable' noise levels advised by BS8233:2014 during the day.
9. I am conscious however that the data relating to deliveries is not based on any direct observations of the store itself, but rather from data captured elsewhere. The NA provides no details of where and when this data was captured. Assessment of the noise insulating properties of walls, windows and the slab between floors is also based on assumptions. Considering the importance of ensuring that the living conditions or health of future occupants are not harmed as a result of noise, I find the use of generalised data troubling. There can be no guarantee that the particular circumstances of other assessments would be comparable to the specific characteristics of this store.
10. The NA seemingly took place on one day between around 1330 and 0100 the following morning. The assessment did not therefore cover the full period the shop is open. It would be reasonable to conclude that if the assessment had considered a longer period, the chances of it coinciding with a delivery would have been greater and more reflective of the store's operation. This is particularly the case where deliveries are not carried out at set times. Any assessment is likely to contain some assumptions. However, one that does not coincide with the full opening hours of the store or record the specific impact of all associated regular activity, does not strike me as a robust approach. Without specific empirical data, there can be no comfort that the assessment's conclusions on either the level of noise generated, or the effectiveness of sound insulation are valid.
11. The fact there are no controls on the timing of deliveries also makes it all the more important that the NA provides a robust analysis of the store's operation. Even if I were to accept the appellant's assertion that deliveries do not take place when the store is closed, this still leaves considerable scope for this potentially noisy activity early in the morning and late in the evening. Notwithstanding that the flats would be located on a busy shopping street, these are still periods when ambient noise is likely to be lower and there is a greater expectation of peace and quiet.
12. I acknowledge that some individual deliveries may not take place over an extended period. Nevertheless, there is also no specific evidence relating to potential additional indirect effects, such as the moving of trolleys through the store and/or activity to the rear. As was noted in the NA, although deliveries may take place at the front of the store now, trollies do appear to be stored at

the rear, directly underneath windows. The evidence is therefore unclear whether there would be prolonged activity associated with deliveries, and increased noise within the unit, that has not been recorded. This adds to my concerns regarding the robustness of the evidence and the likely impacts. I must also have regard to the long-term operation of the store. The potential clearly exists for deliveries to take place at the rear and a change in operator, or business practices, is a possibility. Having a thorough understanding of potential impacts is therefore important.

13. The appellant considers the Council's concerns about the potential for complaints to be exaggerated. Nevertheless, considering the lack of evidence or certainty around deliveries in particular, they should not be disregarded out of hand. People living directly above the store would experience different impacts to those living nearby. A lack of evidence of complaints from nearby flats or dwellings does not mean that future occupants would necessarily have a satisfactory living environment.
14. Based on the evidence before me, I am not satisfied that the operation of the business would result in acceptable levels of noise and disturbance in the flats. Without satisfactory evidence to the contrary, I therefore conclude the development would result in unacceptable harm to the living conditions of future occupants. On this basis, the proposal fails to comply with paragraph O.2(d) of the GPDO and does not constitute permitted development.

Other Matters

15. I have had regard to the fact that many of the shop units along Mill Road appear to have flats above them. This includes the Co-op and Londis convenience stores. While this adds some weight to the argument in favour of the proposal, it does not mean that the proposed relationship between the shop and flats above would be identical to others. For example, I saw that the delivery yard layout for the Co-op differs to that of the Tesco, with rear loading bays being further from the windows of the flats above. This may result in different impacts. I also have no information relating to how, where and when deliveries at the two other convenience stores takes place.
16. Similarly, I have no evidence relating to the circumstances in which these flats were permitted or constructed. I cannot therefore be certain that the proposal is directly comparable to these examples. Having regard to the concerns expressed above, the presence of flats above other shops is not sufficient justification to allow a potentially harmful specific relationship.

Conclusion

17. For the reasons given above, and having regard to all other matters raised, the development does not meet the relevant conditions of Schedule 2, Part 3, Class O of the GPDO. I therefore conclude that the appeal should be dismissed.

S J Lee

INSPECTOR