The Planning Inspectorate

Appeal Decision

Site visit made on 25 January 2021

By Andrew Bremford BSc (Hons) MRICS

an Inspector appointed by the Secretary of State

Decision date: 9th February 2021

Appeal Ref: APP/R3650/W/19/3242663
Arch House, The Common, Cranleigh, Surrey GU6 8RZ

- 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 & Country Planning (General Permitted Development) (England) Order 2015.
- The appeal is made by Mr Luke Nicholson against the decision of Waverley Borough Council.
- The application Ref CR/2019/0003, dated 7 January 2019, was refused by notice dated 5 September 2019.
- The development proposed is described as 'Change of use from office use to residential, (two, 2-bedroom flats proposed), no material changes are proposed to the external appearance'.

Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council accepts that the proposal meets the requirements of paragraph O.1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) such that it would constitute development permitted under Class O of the GPDO, subject to the prior approval of certain matters. There is no evidence before me to the contrary.

3. The GPDO was amended with effect from 1 August 2020 by the Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020 (the Regulations). Class O of Part 3 to Schedule 2 was amended so that the prior approval matters for a permitted change of use to a dwellinghouse include the provision of adequate natural light in all habitable rooms. However, Part 5 of the Regulations sets out transitional and saving provisions which mean that the provision of adequate natural light in all habitable rooms is only a prior approval matter in respect of Class O of Part 3 for applications made on or after 1 August 2020.
The application is dated 7 January 2019 and so before this date, hence, in this case, there is no requirement to assess the proposed development on the basis of the provision of adequate natural light in all habitable rooms.

Main Issues

4. The Council's decision notice confirms that it refused the application on matters in regard to the impacts of noise from commercial premises on the intended occupiers of the development and flooding risks on the site.

5. The appellant contends that as the Council issued its refusal notice in excess of 34 weeks following the validation of the application, far exceeding the 56 day time limit for determinations as set out in the GPDO and, as the scheme is 'permitted development', the proposal does in fact benefit from deemed consent.

6. Therefore, in the context of the above, the main issues are:

   - Whether approval is deemed to have been granted by reason of the timing of the Council's decision; and
   - If not, the effect of the proposal on the living conditions of future occupiers with regard to noise, and
   - Whether the proposal would be acceptable in this location having regard to flood risk.

Reasons

Timing of the Decision

7. The Council's officer report states that the 8-week expiry date for the determination of the application was 4 March 2019 and this has not been expressly disputed by the appellant. On 27 February 2019 the parties agreed, in writing, to an extension to the determination date until 15 March 2019. The evidence indicates that further written correspondence between the appellant and the Council, in regard to flood risk, took place in the following months culminating in the parties agreeing, in writing, to a further four extensions of time, before agreeing on the 30 August 2019 to a final extension of time until 6 September 2019. Following this agreement, the Council issued its formal decision notice on 5 September 2019 confirming its refusal of prior approval for the proposed development.

8. The appellant contends that there were no powers for the local planning authority to seek an extension of the prior approval application as determined within a High Court judgement[1]. However, a more recent Court of Appeal judgement[2] declined to follow the High Court judgement and concluded that Article 7 of the GPDO does permit an extension of the statutory period for determining a prior approval application under Part 3 by written agreement between an applicant and the local planning authority.

9. Having regard to the evidence before me, which indicates that there was written agreement between the Council and appellant, I conclude that the decision was made within the extended time period agreed by both parties. Consequently, and in light of the recent High Court judgement, prior approval is not deemed to have already been granted.

Noise

10. The appeal site comprises a two-storey office building, with an associated external area. Although entirely self-contained it is attached to a motor vehicle garage within a distinctly commercial area. In an earlier dismissed appeal[3] for a similar scheme at the site the Inspector was particularly aware of noise

[1] R (oao Warren Farm (Wokingham) Ltd) v Wokingham BC [2019] EWHC 2007 (Admin)
[2] Gluck v SSHCLG & Crawley BC [2020] EWCA Civ 1756 the Court of Appeal
[3] Appeal Ref: APP/R3650/W/19/3222213

emanating from surrounding commercial uses. Based on my observations at the time of my visit I was also aware of noise from machinery, a compressor, revving engines and other associated impact and whining noise emanating from surrounding commercial uses which include motor vehicle repair garages and MOT testing station, tyre centre, steel fabrication premises and a building materials supply business. Consequently, I agree with the previous Inspector that the noise environment within which the flats would be located would be one characterised by the aforementioned noise.

11. As in the previously dismissed scheme, the proposal would include the installation of sound insultation measures. However, in the appeal proposal the intention is to mechanically ventilate and cool the proposed dwellings in order to negate the need to open windows other than for purge ventilation purposes. The appellant contends that with these measures in place the proposal would be acceptable in terms of noise.

12. However, I find this to be an excessive measure to overcome the location of the development within an established commercial estate. To require future occupiers of the two flats to live in accommodation where they could not open a window to allow fresh air to circulate and to rely on mechanical ventilation, would result in an oppressive environment for residents. In my view, notwithstanding any proposal to mechanically ventilate and cool the flats, it would not be unreasonable to expect future residential occupiers to want to open their windows, including at times of the day when surrounding noise generating commercial uses may be operating, without being subjected to noise levels in excess of the suggested limits set out in the appellant's Noise Assessment.

13. Even if I were to accept that future occupiers would keep their windows closed with the provision of mechanical ventilation and cooling, the noise levels would still exceed the suggested limits. It is only when the relaxed criteria outlined within British Standard BS8233:2014[4] is applied that apparent reasonable internal noise levels within Arch House can be achieved.

14. Such relaxed criteria, according to BS8233:2014, is applicable '*where development is considered necessary or desirable'*. In this regard, it has been put to me that as the location of the appeal site is directly off Cranleigh High Street, the relaxation in the criteria is justifiable. However, the appeal site lies within an area designated 'Suitably Located Industrial and Commercial Land'. I also note that the Council state that it has received complaints in relation to noise from the commercial area impacting upon residents up to 100 metres away. In this context, and in the absence of any substantive evidence before me to demonstrate that the development is considered either necessary or desirable within a distinctly commercial area, it has not been demonstrated that the relaxation of the criteria outlined within the British Standard is justified. Without such relaxation criteria the internal noise levels within the proposed flats would be in excess of the suggested limits and so fall short of the British Standard.

15. In support of the appeal the appellant submitted a revised internal layout to show a vertical rather than horizontal subdivision of the building. The Council state that this internal arrangement would alleviate noise concerns in relation to the original layout, which indicated that the living room of the proposed first

[4] Guidance on sound insulation and noise reduction for buildings

floor flat would be over a bedroom within the proposed ground floor flat. In regard to noise, based on the evidence before me, I see no reason to disagree that the revised internal layout would be acceptable.

16. However, for the reasons outlined above, I consider that future occupiers of the dwellings would be adversely affected by noise from neighbouring commercial premises. Consequently, the proposal would be harmful to the living conditions of future occupiers. The scheme would not accord with the National Planning Policy Framework (the Framework) which requires development to promote health and well-being.

Flooding

17. The appellant's Flood Risk Assessment (FRA) states that a comparison of site levels and modelled water levels indicates that flood water may reach the south and east of the site during modelled flood events.

18. However, the Environment Agency (the EA), who provided the modelled water levels, confirm that the details of the appellant's site topographic survey show ground levels below the 1% and 5% annual exceedance probability (AEP) flood levels. Therefore, in line with the Waverley Borough Council Level 1 Strategic Flood Risk Assessment, which states that the extent of the 5% AEP flood event has been used to define Flood Zone 3b, the EA confirm that the appeal site is identified as lying within Flood Zone 3b (the functional floodplain).

19. The appellant refers to superseded guidance (PPS25 and the accompanying PPG) which stated that developed areas are not generally part of the functional floodplain. However, in this case, while the appellant contends that undertaking detailed modelling would be extremely disproportionate and unreasonable, in the absence of any substantive evidence to the contrary, I am bound to conclude that the appeal site lies within Flood Zone 3b (the functional floodplain).

20. The proposed change of use of Arch House to a building used for dwellings would result in an increase in the flood risk vulnerability classification of the site. As defined in the Planning Practice Guidance[5], the flood risk vulnerability classification of buildings used for dwellinghouses is 'more vulnerable' and development of this nature should not be permitted within Flood Zone 3b (Table 3: Flood risk vulnerability and flood zone compatibility). Thus, the proposal would not be acceptable in this location having regard to flood risk and would not accord with the Framework, which requires that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk.

21. Even if I were to accept the appellant's argument that the site should not be considered to lie within Flood Zone 3b, the FRA confirms that the finished floor level of the building would be below not only the 1% AEP flood level with an appropriate allowance for climate change but also the 5% AEP flood level. Thus, the proposed residential accommodation would be at risk of internal flooding. The revised internal layout would allow future occupiers to move to the first floor of the building if there is a flooding event. However, notwithstanding the revised internal layout, during a prolonged flood event safe refuge within the development would be unlikely due to lack of essential

[5] Guidance category: Flood risk and coastal change

supplies (such as food) and the lack of electrical power and/or sanitary provision as often these services are either interrupted or do not function correctly due to the impacts of flooding. Moreover, although flood resilience measures are proposed, I have not been presented with any details of flood resistance measures to adequately prevent flood water from entering the building in the first place.

22. Consequently, for the above reasons, it has not been satisfactorily demonstrated that future occupiers of the two properties would be safe from the risk of flooding. The scheme would not accord with the Framework which requires development in areas at risk of flooding to be safe.

Conclusion

23. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Andrew Bremford

INSPECTOR