



Appeal Decision

Site visit made on 12 November 2020

by Mr M Brooker DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 March 2021

Appeal Ref: APP/P4605/W/20/3257426

Radio House, 79 Aston Road North, Birmingham B6 4DA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant, subject to conditions, of 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 Bav Tamber, Gian Capital against the decision of Birmingham City Council.
- The application Ref 2020/02630/PA, dated 1 April 2020, was granted approval by notice dated 3 July 2020 subject to conditions.
- The development proposed is change of use from offices (Use Class B1[a]) to 55 no. apartments (Use Class C3).
- The conditions in dispute are Nos 1, 3,4 and 5 which state that:
 - 1) The windows to the residential accommodation hereby approved shall be sealed / non-openable and thereafter maintained.
 - 3) Prior to commencement of development, except for enabling works, a scheme of glazing insulation and ventilation shall be submitted to and agreed in writing by the Local Planning Authority. The scheme shall reflect the recommendations provided in Section 8 of submitted Environmental Noise Impact Report dated 6th March 2020 reference 13439 revision 1. The scheme shall be implemented in accordance with the approved details prior to first occupation and thereafter maintained.
 - 4) Prior to occupation of the premises an overheating assessment shall be submitted to and approved in writing by the Local Planning Authority. The details shall identify how background ventilation and purge ventilation will be achieved and how the risk of overheating will be mitigated for occupants, by the installation of an enhanced mechanical solution. Once the scheme is approved in writing, the development shall be implemented in accordance with the approved details prior to first occupation and thereafter maintained.
 - 5) Prior to occupation of the premises, a validation report shall be submitted to and approved in writing by the Local Planning Authority which shows that the internal noise levels set out below are achieved. Total internal noise levels (from the ventilation system and external noise break-in) at bedrooms and living rooms shall not exceed NR25 when the ventilation is providing minimum throughput and shall not exceed NR35 at maximum throughput. The validation report shall include the ventilation and glazing specifications, and its methodology shall be agreed in writing by the Local Planning Authority prior to the commencement of tests.
- The reasons given for the conditions are:
 - 1) In order to secure the satisfactory development of the application site in accordance with Policy PG3 of the Birmingham Development Plan 2017 and the National Planning Policy Framework.
 - 3) In order to secure the satisfactory development of the application site and safeguard the amenities of occupiers of premises/dwellings in the vicinity in accordance with Policy PG3 of the Birmingham Development Plan 2017 and the NPPF.
 - 4) In order to secure the satisfactory development of the application site and safeguard the amenities of future residential occupiers in accordance with Policy PG3 of the Birmingham Development Plan 2017 and the National Planning Policy Framework.
 - 5) In

order to secure the satisfactory development of the application site and safeguard the amenities of occupiers of premises/dwellings in the vicinity in accordance with Policy PG3 of the Birmingham Development Plan 2017 and the NPPF.

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the conditions are necessary and reasonable with particular regard to the effect of noise from neighbouring uses on the living conditions of future occupiers and the ongoing operation of nearby commercial premises.

Reasons

3. The appeal building is located within a designated Core Employment Area (CEA). Policy TP19 of the Birmingham Development Plan (BDP) identifies the types of employment uses that would be acceptable in CEAs, which are Classes B1b; B1c (light industrial); B2 (general industrial) and B8 (storage and distribution) and other uses appropriate for industrial areas.
4. Consequently, the appeal scheme introduces a residential use in the form of 5 apartments into an area dominated by commercial premises. Policy PG3 of the BDP seeks high quality design and, amongst other matters, to make the best use of existing buildings.
5. The disputed conditions all relate to the issue of noise mitigation. The Council's case largely relies on the appellant's Environmental Noise Impact Report¹, submitted in support of the appeal. The recommendations of the report specified the glazing to be used, well-sealed frames without trickle vents and passive or mechanical ventilation. The need for such measures appears to be largely as the result of noise generated by fireworks that were recorded and observed.
6. The appellant has subsequently submitted a revised Environmental Noise Impact Report referred to as reference: 13439 Revision 1 Addendum - dated 3 November 2020. The recommendations of this report reverse those of the earlier report and identify that the existing glazing or "minimum standard specification for residential dwellings" can be used.
7. The report details that this new recommendation is on the basis of the exclusion of a noise source identified as fireworks despite the report stating that "whilst it is very likely the case, it cannot be confirmed whether the fireworks are related to the banquet hall event or not". The reasoning for the exclusion of the firework noise source is simply stated as "the client has instructed that Soundtesting.co.uk Ltd. omit the fireworks from the assessment and base the recommendations only on banqueting suite operational noise".
8. A number of conditions were attached to the planning permission² for the Banqueting Hall. On the basis of the evidence before me I am not satisfied that it has been demonstrated that the use of fireworks is explicitly prevented by these conditions nor that such activities are "outside the planning permission

¹ reference 13439 revision 1 by Soundtesting.co.uk Ltd

² 2018/09376/PA

for the use of that site” as stated by the appellant. I note however that a number of conditions are attached to that permission with the clear intention of protecting the occupiers of surrounding buildings from noise and disturbance generated by that use and I give this weight in the determination of the appeal.

9. The appellant refers to the earlier appeal³ in respect of the site and I note that paragraph 17 of that decision refers to “buffer space between the appeal site and non-adjacent neighbouring uses”. The decision also identifies that in determining any future Prior Approval application the impacts of noise from commercial premises on the intended occupiers of the development would need to be considered.
10. The surrounding area is a mix of uses including premises that are commercial in nature and the appellants evidence identifies a noise impact, the fireworks, that is likely from a commercial premises that would have an adverse impact on future occupiers of the appeal property requiring mitigation. Furthermore, nearby commercial premises could, at a future date introduce noisier uses or daytime activities that are not necessarily controllable, and the Framework is explicit that existing businesses should not be unreasonably restricted by development permitted after they were established.
11. Therefore, it has not been demonstrated that the disputed conditions are not necessary and reasonable with particular regard to the effect of noise from neighbouring uses on the living conditions of future occupiers and the ongoing operation of nearby commercial premises. The removal of the condition would be contrary to Policy PG3 of the BDP and the relevant sections of the National Planning Policy Framework.

Conclusion

12. For the reasons detailed above the appeal is dismissed.

Mark Brooker

INSPECTOR

³ APP/P4605/W/19/3234839 - 13 November 2019