



Appeal Decision

Site Visit made on 22 March 2021

by Alexander O'Doherty LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 April 2021

Appeal Ref: APP/Y3940/W/20/3262800

147B Boreham Field, Warminster BA12 9EF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Sudesh Rishi against the decision of Wiltshire Council.
- The application Ref 20/06196/FUL, dated 22 July 2020, was refused by notice dated 6 October 2020.
- The development proposed is a change of use of redundant commercial space into residential dwelling.

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposal on the living conditions of the intended future occupiers of the scheme, with particular reference to noise.

Reasons

3. The appeal site is a ground floor commercial space that is currently unused. It is situated between two hot-food takeaways, 'Snappy Peppers' and 'Royal Fish Bar'¹, located in an otherwise largely residential area. It is common ground that both of the takeaways operate late and open early and that the kitchens are located to the rear, near what would be the bedroom for the proposed dwelling.
4. The appellant has submitted a Sound Insulation Testing Report², which, according to the appellant, was completed after various measures were implemented to reduce the noise from the air ducts from one of the adjacent commercial kitchens. However, as that report relates to the relationship between 147A Boreham Field (a residential flat) and the appeal site, it does not address the potential noise impacts from the two takeaways in relation to the appeal site. Accordingly, its conclusions are not persuasive.
5. Paragraph 4.0 of the appellant's Noise Impact Assessment³ (NIA) confirms, with regards to the proposed bedroom at the appeal site, that the night-time L_{Max} level was 65dB in relation to the hours assessed (23:00 – 07:00). This is well above the World Health Organisation guideline noise criteria of an internal sleep disturbance noise limit of 45dB L_{Max,F}, referred to at paragraph 2.5 of the NIA.

¹ Referred to as 'Oceans Fish Bar' in the appellant's Grounds of Appeal.

² SITMA Job No: 10507 (test date 14th July 2020)

³ DAAGROUP (26th October 2020, checked 28th October 2020), Issue 01

6. The appellant has suggested a number of mitigation methods. In regard to the intended use of double glazing, paragraph 5.1 of the NIA makes clear that its effectiveness is predicated on the assumption that the external building fabric elements of the proposed development would be comprised of blockwork. Thus, the facts in relation to the physical composition of the external building fabric have not been established. Furthermore, a diagram of an acoustically-upgraded party wall has been included within the NIA and an expected sound insulation performance figure has been given, but the potential resulting noise levels at the appeal site have not been specified. As such, I consider that the potential effectiveness of these two methods have not been established.
7. In terms of mechanical ventilation, the NIA states that with the windows open, the internal noise levels would be exceeded in the living area of the proposed dwelling. In this regard, the NIA appears to suggest that windows should only be openable for times when purge ventilation is required, such as for cooking. In my view, this is an unrealistic proposition, as windows may need to be opened for a variety of reasons, including in hot weather. Hence, this proposed method would not mitigate the unacceptable levels of internal noise that would arise during those times when the windows in the living area would be required to be open as part of day-to-day living.
8. I have given some thought to imposing conditions in regard to the above, including improvement works to the vents and ducting from the commercial kitchens and requiring a pre-completion sound insulation test to be carried out. However, and taking into account my findings above, it does not appear that a sufficiently convincing case has been made to address the ambiguity that remains as to their effectiveness on acceptably limiting the measured noise levels.
9. Thus, the proposal would have a harmful effect on the living conditions of the intended future occupiers of the scheme, with particular reference to noise. As a result, it would conflict with Core Policy 57 of the Wiltshire Core Strategy (adopted 2015) which provides, amongst other things, that new development should make a positive contribution to the character of Wiltshire through ensuring that appropriate levels of amenity are achievable within the development itself, including the consideration of pollution (such as noise). The proposal would also conflict with paragraph 127 of the Framework⁴, which provides that planning decisions should ensure that developments create places with a high standard of amenity for future users.

Other Matters

10. The appellant has referred to the lack of interest in letting the appeal site as a commercial space, and that the conversion work could be carried out with little inconvenience to surrounding residents. Nevertheless, these considerations would not diminish the harm that would arise from the proposal, and therefore collectively they have been given limited weight. Taken together, they do not change my findings on the main issue in this appeal.

⁴ National Planning Policy Framework 2019

Conclusion

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

Alexander O'Doherty

INSPECTOR