



Appeal Decision

Site Visit made on 15 June 2021

by William Cooper BA (Hons) MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 28th July 2021

Appeal Ref: APP/N1920/W/21/3268350

Metropolitan House, Darkes Lane, Potters Bar EN6 1AG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) 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) (GPDO).
 - The appeal is made by Metropolitan House Investments (UK) Limited against the decision of Hertsmere Borough Council.
 - The application Ref: 20/0740/PD56, dated 18 May 2020, was refused by notice dated 6 August 2020.
 - The development proposed is described as change of use and conversion of the first, second, third, fourth, fifth, sixth and seventh floors of Metropolitan House from Use Class B1(a) offices to Use Class C3 dwelling houses, with ground level car parking and basement/ground floor refuse storage and cycle parking.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant has submitted some dwelling layout amendments to the appeal. The revisions do not relate to the main issue in this case, and the amended scheme is sufficiently similar to the application scheme that no interests would be prejudiced by my consideration of the amended scheme.
3. The appellant suggests in their final appeal comments, that, although not their preference, a planning condition could be applied for the proposed dwellings' windows to be permanently sealed, so that occupiers could not open them. However, this would significantly evolve the scheme from what was submitted for prior approval, which included openable windows. This would be contrary to paragraph M.2 of the Procedural Guide: Planning appeals - England, which sets out that the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought. Furthermore, such a condition has not been suggested by the Council. In the light of the above, for the purposes of making my decision, I assess the proposed development as being the scheme with openable windows, as was submitted for prior approval.
4. Since the Council's decision, a new version of the National Planning Policy Framework (the Framework) was published in July 2021. The substance of Framework policy, insofar as it is relevant to the main noise issue in this case, remains broadly the same. I shall proceed to determine the appeal on this basis.

Main Issue

5. The main issue is whether the proposal would be permitted development under Schedule 2, Part 3, Class O of the GPDO, with specific regard to criterion (d) of condition Class O.2.(1), in respect of impacts of noise from commercial premises on the intended occupiers of the development.

Reasons

6. The appeal building is a part eight storey, part three storey block comprising ground floor commercial uses with offices above. It is in a shopping area within a town centre location, on the opposite side of the Darkes Lane from Potters Bar railway station. Several fast food premises are located on the ground floor of the building, including a McDonald's restaurant with drive-through.
7. Darkes Lane is an apparently busy road with traffic passing and pulling up to use and service the local shopping area and station. Businesses within the shopping area generate customer activity. The McDonald's drive-through at the base of the appeal building generates vehicular movement. Also, trains travel by regularly on the railway line to the south-west of the appeal building. The above combination of factors contributes to the background metropolitan 'hum' (BMH) which is noticeable in the vicinity of the appeal building.
8. Given the convenience and vibrancy of the building's town centre location and context, the BMH is likely to be regarded by future occupants of the proposed dwellings as a tolerable part of the town centre living experience. The presence of converted apartments at Albany Gate on the opposite side of Darkes Lane further points to the likelihood of this.
9. However, in addition to the BMH, noise is generated by a cluster of building services plant for the McDonald's premises. The plant is located on a flat roof at first floor level. As set out in the Noise Survey & Technical Assessment¹ submitted by the appellant, the plant includes an extract fan, condenser units, a refrigerator compressor unit, and an air handling unit with heating. During my site visit, albeit a snapshot in time, the plant noise noticeably came through into the building, both with windows open and closed.
10. The Noise & Vibration Assessment Report (NVA)² by one of the appellant's acoustic consultants indicates that around two thirds of the proposed dwellings would be unaffected by adverse noise impacts. Nevertheless, it is undisputed that plant noise levels are high in the vicinity of some of the proposed dwellings' windows. Judging by the NVA³, there is potential for adverse noise impacts to affect occupiers of approximately a third of the proposed apartments in the following ways, unless mitigation measures were put in place and windows were kept shut.
11. There would potentially be low-adverse noise impacts from the drive-through payment window and collection window on occupiers of three first floor apartments. Significant adverse noise impacts from the drive-through order point and intercom would potentially affect residents of two apartments located

¹ McDonalds Plant Noise Survey & Technical Assessment (NSTA), Report No. 20-0141-0 R02 by Sustainable Acoustics.

² By auricl acoustic consulting, dated 1 February 2021.

³ As set out in Section 9.0 Conclusion.

- on the first and second floor. Significant adverse noise impacts of the plant would potentially be experienced by occupiers of 30 proposed apartments.
12. The NVA sets out that adverse noise impacts on the third or so of proposed dwellings concerned could be satisfactorily addressed on the basis of mitigation through internal secondary glazing, and mechanical ventilation and cooling 'so that windows can remain closed'. As such, noise impacts would be satisfactorily addressed, if the potentially affected residences' windows remained closed.
 13. However, the proposal includes openable windows. The majority of other appeal decisions cited in this case point to the general desire of residents to open their windows. That, during my site visit, albeit a snapshot in time, windows were open on various floors of Albany Gate, further points to residents liking to open their windows. In the light of the above, it is likely that future occupiers of the proposed dwellings would open their windows, seeking the comfort of fresh input of air, including during warmer months.
 14. When opening their windows, future occupiers of approximately a third of the proposed apartments would be subjected to adverse noise disturbance arising from a combination of the plant and drive-through facility of the fast food outlet.
 15. The following combination of factors would contribute to this disturbance. Several wings of the building together largely wrap around the roof on which the plant is situated. This 'canyon' like configuration of building surfaces contributes to concentration of plant noise in the vicinity of some proposed dwellings' windows. As observed during my visit, the combined whirring and droning noise of the plant is noticeably distinct over and above the surrounding BMH, experienced from within and in the vicinity of the appeal building.
 16. Judging by the NTSA, the primary plant noise sources operate as follows. The extract fan operates continuously while the restaurant is in operation, and the refrigeration compressor operates typically for around one to three minutes, every four to eight minutes. Furthermore, the assessment of the Council's Principal Environmental Health Officer⁴ indicates that (a) some of the plant would be likely to run through the day and part of the night from shortly after 6am until around 1am on some days/nights and (b) the condensers are likely to run 24/7. The above together points to a likely substantial duration and frequency of noise sources close to the affected proposed dwellings.
 17. Furthermore, on the evidence before me, noise intrusion is likely to occur in some proposed apartments with window(s) open, that would disrupt future occupiers' domestic activities such as having conversations, watching television and reading. The above together would result in significant noise nuisance and annoyance to among around a third of future occupiers of the proposed development. This would result in discomfort and associated health risks for future residents of a significant proportion of the proposed dwellings.
 18. The Procedure for applications for prior approval under Part 3 in the GDPO⁵ requires 'regard to the National Planning Policy Framework...so far as relevant to the subject of the prior approval, as if the application were a planning application'. Paragraph 130f) of the Framework requires development to ensure a high standard of amenity for existing and future users. Moreover, paragraph

⁴ As set out in Appendix 1 of the Council's Appeal Statement.

⁵ Schedule 2, Part 3, paragraph W.(10)(b).

174 of the Framework, advises that decisions should contribute to and enhance the local environment by, among other things, preventing new development from being adversely affected by unacceptable levels of noise pollution. Paragraph 185 of the Framework requires that development is appropriate for its location, taking into account likely effects on health and living conditions, and avoids noise giving rise to significant adverse impacts on health and quality of life.

19. Mindful of these Framework requirements and the expectation of a good standard of amenity for future occupiers, I find that the inclusion of 33 of the proposed apartments whose occupiers are likely to be adversely affected by noise from commercial premises would be unacceptable.
20. A further impact of noise from commercial premises on occupiers of the development stems from the likelihood of complaints arising from among future occupiers of around a third of the proposed dwellings about noise and nuisance from operation of the fast food premises at the base of the building, with consequent pressure to restrict the operation of the business premises. This would conflict with paragraph 187 of the Framework, which is clear that existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. This aspect further weighs against the proposal.
21. I note the intent of McDonald's Estates team⁶ to pursue a planning application for alterations to reduce receivable noise from the plant and drive-through. However, full details of this proposal are not before me, nor is planning permission for it. As such, this intended proposal carries limited weight.
22. Albany Gate, and development examples in other towns and cities, as cited by the appellant, do not include the fast food outlet plant and drive-through facilities that are part of the current appeal building. Given this, there is no certainty that noise conditions at the appeal property are decisively similar at the other properties. This factor limits the extent to which the other properties are analogous to the current appeal proposal. Furthermore, the appeal proposal has its own setting and circumstances and, as such, I assess this case on its own merits.
23. In conclusion, the proposal would result in unacceptable adverse noise impacts from commercial premises on intended occupiers of the development. I therefore conclude that the proposal is not permitted development under Schedule 2, Part 3, Class O of the GDPO.

Other Matters

24. Local residents have raised concerns about privacy, lighting and traffic which go beyond the scope of the reason for refusal. As some of these matters are outside the scope of GPDO Paragraph O.2.(1), and I am dismissing the appeal on other grounds, it is not necessary for me to consider these matters further.

Conclusion

25. For the above reasons the appeal is dismissed.

William Cooper INSPECTOR

⁶ As set out in the letter of 15 June 2021.