
Appeal Decision

Site Visit made on 28 June 2021

by Martin Chandler BSc, MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 September 2021

Appeal Ref: APP/Z1775/W/21/3271168

27 Guildhall Walk, Portsmouth, PO1 2RY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required 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 and Country Planning (General Permitted Development) (England) Order 2015, as amended.
 - The appeal is made by Old House Group Limited against the decision of Portsmouth City Council.
 - The application Ref 20/00017/PACOU, dated 27 July 2020, was refused by notice dated 17 September 2020. The development proposed is change of use of the first and second floor offices into 10no. studio/1-Bed self-contained apartments (Use Class C3).
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Old House Group Limited against the decision of Portsmouth City Council. This application is the subject of a separate decision.

Procedural Matters and Main Issue

3. Following the submission of the appeal, a revised National Planning Policy Framework was published. The main parties were consulted regarding the implications, if any, for the appeal, and any responses received have been factored into my assessment of the proposal.
4. The Council refused the Prior Approval application for two reasons, one of which related to the provision of adequate natural light in all habitable rooms. However, in response to evidence presented by the Appellant, the Council has conceded that the date of the original application ensures that this matter is not material to the assessment of the proposal. Accordingly, the Council have withdrawn this reason for refusal, and based on the evidence before me, I have no reason to disagree.
5. As a consequence, the main issue is whether the proposal represents permitted development under Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the 2015 GPDO), having particular regard to the impacts of noise from commercial premises on the intended occupiers of the development.

Reasons

6. Class O of the 2015 GPDO enables the change of use of a building and any land within its curtilage from a use falling within Class B1(a) (offices) to a use falling within Class C3 (dwellinghouses). However, Paragraph O.2 sets out a series of conditions that must be assessed to enable the permitted change to take place, one of which relates to the impacts of noise from commercial premises on the intended occupiers of the development.
7. The appeal site is situated within a town centre location, amongst uses that would be considered to contribute to the night-time economy, with the immediately adjoining buildings being used as a nightclub and a public house. Accordingly, the appeal site is bounded by noise-generating uses.
8. The appeal has been supplemented by a Noise Impact Assessment (January 2021) (NIA) and this document confirms that Guildhall Walk is well known for its nightlife with a variety of pubs, clubs, and takeaways. Accordingly, the NIA states that the noise profile of the area is distinctly categorised by this nightlife with the dominant source of noise being night-time revellers and music breakout noise, as well as road traffic noise.
9. Due to the timing of the application, amidst restrictions due to the Covid-19 pandemic, the evidence before me confirms that noise surveys would not demonstrate the 'normal' conditions at night-time. Accordingly, rather than take specific noise measurements at the appeal site, the NIA suggests that noise data taken from comparable sites should be utilised to assess the proposal. Specifically, survey information relating to Hippodrome House has been provided, as well as 10 Guildhall Walk. The NIA suggests that noise levels recorded at these sites would be representative of the development site during night-time hours. However, to account for a worst-case scenario, the NIA presents higher figures against which to design potential mitigation.
10. The proposed mitigation would include the provision of secondary glazing, internal wall lining, party wall lining, and floor insulation. In addition, there would be a requirement for mechanical ventilation because the windows would need to remain shut to achieve the required noise levels. Accordingly, the mitigation measures demonstrate an expansive package of interventions that are based on a number of well-considered assumptions. However, the appeal site is situated in a highly noise-sensitive location, bounded on both sides with uses that have the potential to generate considerable noise levels. In addition, the Council have brought my attention to an outdoor area to the rear of the site that could also generate substantial noise levels at night-time. As a consequence, I find that the sites presented by the appellant to support their case are not directly comparable to the appeal site.
11. Although the higher figures help to provide some insurance against the adjacent uses, basing the substantial mitigation measures on non-site-specific data provides a lack of certainty in relation to the effect on future residents. I note that the appellant would be content to accept a condition requiring the necessary mitigation work to take place, as well as to require future noise survey work. However, due to the nature of the adjacent sites and the lack of site-specific data, in my judgement, there is a risk that future survey work would place an unreasonable burden on the appeal scheme. For example, the survey work may demonstrate that the proposed mitigation would not be sufficient, and that additional mitigation may not be feasible. On this basis, I

find that the use of a condition would fail to meet the test of reasonableness. This is because, in the absence of specific evidence, there is a risk that suitable mitigation could not be provided.

12. I accept that the recent restrictions have substantially hampered the appellant's ability to generate site-specific data. However, the failure to provide this in such a noisy environment is a substantial shortcoming of a proposal which seeks to introduce a noise-sensitive use. The mitigation proposed is a substantial package, but for the reasons identified above, I cannot have certainty that it would suitably reduce noise levels to an acceptable level. Consequently, having particular regard to the impacts of noise from commercial premises on the intended occupiers of the development, I conclude that the proposal would not represent permitted development by virtue of Schedule 2, Part 3, Class O of the 2015 GPDO. On this basis, it would also fail to accord with Policy PCS23 of the Portsmouth Plan (2012) which seeks to provide a good standard of living environment for future residents.

Other Matters

13. I note that residential uses already exist within the city centre, and that local policy encourages such use. However, this does not alter my findings regarding the site-specific constraints regarding noise. Accordingly, these matters do not outweigh my conclusion on the main issue identified above.
14. Due to my conclusion on the main issue, it is unnecessary for me to consider the other conditions set out within paragraph O.2 of Class O or whether the proposal would have an effect on the Solent Special Protection Area. In addition, matters relating to housing supply have no bearing on proposals seeking prior approval.

Conclusion

15. For the reasons identified above, the appeal is dismissed.

Martin Chandler

INSPECTOR