
Appeal Decision

Site Visit made on 8 November 2021

by Martin Chandler BSc, MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 December 2021

Appeal Ref: APP/Q3820/W/21/3269471

Gainsborough House, 26-32 High Street, Northgate, Crawley RH11 7FZ

- 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 and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by PFC Property Group c/o Capital Real Estate Partners against the decision of Crawley Borough Council.
 - The application Ref CR/2020/0473/PA3, dated 31 July 2020, was refused by notice dated 6 November 2020.
 - The development proposed is Change of use from offices (Use Class B1) to residential dwellings (Use Class C3) under Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. In determining the application, the Council concluded that due to the lack of elevation drawings, the proposal failed to meet the requirements of Paragraph W of Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the 2015 GPDO). Based on the evidence before me, the elevation drawings would have enabled the Council to make a judgement regarding natural daylight. However, evidence presented by the Appellant demonstrates that due to the date of the original application, this requirement was not necessary. I find the evidence presented by the Appellant on this matter persuasive, and as a consequence, I am satisfied that I do not need to make a judgement regarding this matter as a main issue.

Main Issue

3. The main issue is whether the proposal represents permitted development under Schedule 2, Part 3, Class O of the 2015 GPDO.

Reasons

4. Class O, Part 3 of the 2015 GPDO establishes permitted development rights for development consisting of a 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). Paragraph O.2 establishes the conditions for such changes of use, of which, condition (d) states that impacts of noise from

commercial premises on the intended occupiers of the development require consideration.

5. The application was submitted with an acoustic report, however, this was conducted during a time of national lockdown. Accordingly, the report is based on theoretical modelling rather than actual data. In this regard, although it is a useful document, it does not present a true picture of the surrounding noise environment, having particular regard to the bar/nightclub use at ground floor level. Consequently, in my judgement, the weight that can be afforded to this report is limited. The ground floor activities and their impact upon future occupiers on the floors above is not fully understood and therefore, the impact of noise cannot be assessed in an entirely robust manner.
6. I note the decisions that have been brought to my attention regarding the use of a condition to ensure suitable mitigation. However, in the absence of site-specific evidence, I find that such an approach would lack sufficient certainty to safeguard the living conditions for future occupants. Accordingly, it would not provide the necessary confidence that noise impacts could be suitably mitigated.
7. To overcome this concern, the appeal has been supplemented with a Unilateral Undertaking (UU) which seeks to surrender the authorised use of the ground floor bar/nightclub. In light of the UU, it is the appellant's case that the noise associated with the ground floor use would be removed and that therefore, the conversion could proceed in an unfettered manner.
8. However, such an undertaking would have substantial consequences for land that is not included with the proposal itself. Although the ground floor is in the same ownership, the UU would essentially have the effect of providing the ground floor with a nil use. Accordingly, any future use would require planning permission and based on the evidence before me, I cannot have any certainty that an alternative use would comply with the requirements of the development plan. Moreover, the blunt use of the UU would appear to be in direct conflict with Paragraph 187 of the National Planning Policy Framework. This is because the UU would place a fundamental restriction on the existing use despite it being established before the prior approval application.
9. I note that the same paragraph states that where the operation of an existing business could have a significant adverse effect on new development, the agent of change should be required to provide suitable mitigation before the development has been completed. However, I find that the surrendering of the use does not constitute suitable mitigation. Instead, in my judgement it represents a blunt approach that could fetter future use of the site. Moreover, I have no evidence regarding what may replace the existing use and therefore I can have no confidence that the UU could essentially blight the ground floor of the appeal site.
10. Accordingly, I attach very limited weight to the UU as a means of overcoming the noise concerns. Consequently, the proposal should be assessed on the basis of the evidence before me, and in that regard, I find that the noise assessment fails to adequately demonstrate that intended occupiers would not experience unacceptable noise levels.

11. For the reasons identified above therefore, I conclude that the proposal would not represent permitted development under Schedule 2, Part 3, Class O of the 2015 GPDO.

Other Matters

12. I note that Natural England have identified concerns in relation to the Sussex North Water Supply Zone. I have received evidence from the parties regarding this matter, and had the main issue been overcome, this would have been fully assessed. However, in light of my findings set out above, the appeal has not proved successful. Accordingly, it has not been necessary to reach a finding regarding this matter.

Conclusion

13. For the reasons identified above, the appeal should be dismissed.

Martin Chandler

INSPECTOR