



Appeal Decision

Site visit made on 21 February 2022

by T Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th March 2022

Appeal Ref: APP/D0840/W/21/3283081

14 St. Marys Street and 21 Old Bridge Street, Truro TR1 2AF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 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).
- The appeal is made by Rannji Developments Ltd against the decision of Cornwall Council.
- The application Ref PA21/02288, dated 5 March 2021, was refused by notice dated 27 April 2021.
- The development proposed is Conversion of existing offices to six flats.

Decision

1. The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for conversion of existing offices to six flats at 14 St. Marys Street and 21 Old Bridge Street, Truro TR1 2AF in accordance with the terms of the application Ref PA21/02288, dated 5 March 2021, and the details submitted with it, including Drawing Nos 001B (Location Plans), 002E (Planning – Existing Plans & Elevations), 003F (Planning – Proposed Plans & Elevations), 004D (Enlarged Proposed Floor Plans) 005B (Proposed Perspectives) and 006B (Topographical Survey), pursuant to Article 3(1) and Schedule 2, Part 3, Class O. The approval is subject to the condition that the development must be completed within a period of 3 years from the date of this decision in accordance with paragraph O.2(2)(a) of the above Order, and subject to the following additional condition:
 1. The development shall take place in accordance with the mitigation methods in the submitted Noise Impact Assessment (by ACT Acoustics, dated 2 September 2021) and shall not be occupied until the final details and specification of the proposed windows and ventilation system shall have first been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and retained as such thereafter.

Preliminary Matters

2. The application form includes two postcodes for the appeal site. However, for clarity, I have used the postcode on the appeal form and decision notice.
3. A revised version of the National Planning Policy Framework (the Framework) was published in July 2021. However, the main parties submitted appeal documents after this and therefore had the opportunity to comment on its relevance to the appeal proposal. Consequently, no parties will have been prejudiced by my having regard to the latest version in reaching my decision.

Background and Main Issue

4. 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 (the GPDO), planning permission is granted subject to limitations and conditions 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) of the Schedule to the Use Classes Order, to a use falling within Class C3 (dwellinghouses) of that Schedule. The Council considers that the development accords with the requirements set out in Paragraph O.1 of Class O. There is no evidence before me to the contrary.
5. Paragraph O.2 sets out that development under Class O is permitted subject to an application to the local planning authority for a determination as to whether their prior approval is required in relation to the matters set out in paragraphs O.2(1). The Council has not raised concerns or indicated that prior approval should be refused in relation to the matters set out in O.2(1)(a), (b), (c) and (e). On the basis of the submitted evidence, I have no reason to disagree. In relation to the matter under (e), regarding the provision of adequate natural light in all habitable rooms, I also observed on my site visit that the habitable rooms of the proposed flats would all receive adequate natural light. This includes via the various windows – including high level windows – serving flat 1 and the glazed door which would serve bedroom 2 of flat 3. The lack of a report on this matter does not lead me to a different conclusion.
6. Accordingly, the main issue is the impact of noise from commercial premises on the intended occupiers of the proposed development.

Reasons

7. The appeal site is situated adjacent to Vertigo bistro/venue/bar/nightclub and its beer garden. The site's location, within the centre of Truro and in area with various commercial uses, means that it is situated in a relatively busy, built-up setting which is likely to involve a variety of activities and associated noises. For example, I observed on my site visit that Truro cathedral is on the opposite side of Old Bridge Street and its bells are very noticeable in the vicinity.
8. The proposed development for residential accommodation would introduce a noise sensitive use next to a commercial hospitality premises which has a licence to operate and play live and recorded music both indoors and outdoors from morning until late throughout the week. The living conditions of the intended occupiers could therefore be affected by noise from Vertigo at any time of the day and for part of the night, including during the first few hours of typical sleep times. Confirming this, the updated noise survey – carried out over a busy August weekend – in the additional Noise Impact Assessment (dated 2 September 2021, September NIA) submitted with the appeal shows that noise from Vertigo was highest on Friday and Saturday between 1900 and 0130 hours, with noise peaking at 71 LAeq dB¹. Using this maximum noise reading, predicted worst-case unabated noise levels in the September NIA for the proposed flats that would directly face Vertigo's outdoor area would range between 51-67 dB LAeq, well above the recommended ambient noise levels of

¹ The noise levels recorded during the August noise survey (as detailed with the September NIA) exceeded the levels recorded in the noise survey carried out for the April NIA and provide for a more representative assessment than the April NIA.

living spaces in BS 2833. Such unabated noise levels could reasonably be described as falling into the Significant Observed Adverse Effect Level (SOAEL) in the Planning Practice Guidance noise exposure hierarchy table.

9. However, with mitigation in the form of suitable windows with acoustically attenuated trickle vents, the September NIA finds that predicted internal noise levels in the proposed development would meet both the recommended ambient average noise levels of living spaces in BS 2833 and the peak noise limit for bedrooms of 45 dB LA_{max} for the 10th noisiest night time event. With windows closed in relevant rooms during noisy periods at Vertigo, the intended occupiers of the proposed development would therefore have an acceptable internal noise environment. In coming to this view, I have taken into account that some noise may continue after Vertigo's opening hours whilst patrons leave the premises.
10. Although occupiers of the proposed development would have to close windows during the adjoining commercial premises' busy/noisy periods in order to achieve internal noise levels in-line with the standards, trickle vents in the windows would provide some ventilation. For much of the time, this level of ventilation would be likely to be sufficient on its own. However, as identified in the September NIA, installing a mechanical ventilation system would provide a higher level of ventilation for periods when greater ventilation might be necessary, such as during hot summer nights. On this basis, both internal noise levels and sufficient ventilation in the proposed development would be achieved. The need for a specialist to install a mechanical ventilation system, the energy required to power it and whether such systems have been found to be appropriate elsewhere do not lead me to a different conclusion in this case.
11. I recognise that in order to meet recommended internal noise levels/standards, windows would have to be shut during Vertigo's busiest/noisiest periods. Such times may not be predictable or consistent from one day or week to the next, and would not necessarily always only be on Friday and Saturday evenings. However, with sufficient ventilation provided and Vertigo being unlikely to result in significant noise levels all day, every day, shutting windows to avoid noise disturbance during Vertigo's busiest/noisiest periods would not harm occupiers' living conditions. There would also be times when noise from Vertigo would be at levels that would not necessitate the shutting of windows in order to achieve the standards². Furthermore, occupiers would have the option to open windows at any time if they chose to do so and it seems to me that the intended occupiers of the proposed development would be likely to expect a certain degree of noise and disturbance given the site's central, built-up location within Truro and the various other activities and uses in the locality. Accordingly, I am satisfied that the impact of noise from commercial premises on the intended occupiers of the proposed development would, with the mitigation proposed, be acceptable and not significant. On the basis of the proposed mitigation, it seems to me that internal noise levels within the development also would fall below the SOAEL of the noise exposure hierarchy.
12. The Council's Environment Protection Team question whether it is acceptable in noise terms to place new residential units next to a bar/pub in any

² The appellant's submitted Appeal Response document by ACT Acoustics sets out for example that on the Sunday night during the August 2021 noise survey, the BS 8233 internal noise levels could have been met for the nearest room to Vertigo (Flat 2, bedroom 1 - Window) with the windows open.

circumstance. However, the submitted evidence indicates that the noise from Vertigo can be mitigated, by the agent of change, to the point that the living conditions of the future occupiers of the proposed development would be acceptable in relation to noise and ventilation. Accordingly, the appeal proposal would not risk the viability or future operation/potential expansion of Vertigo because it would not require unreasonable restrictions to be placed on the existing business. In coming to this view, I have taken into account potential proceedings under the Environmental Protection Act.

13. With the mitigation proposed, the living conditions of intended occupiers would not be adversely affected by either unacceptable noise or insufficient ventilation. Accordingly, the appeal proposal would be consistent with the various relevant provisions in the National Planning Policy Framework. This includes in relation to ensuring healthy living conditions and places; providing a high standard of amenity for future users; development being appropriate to its location taking into account the likely effects of pollution on health and living conditions; avoiding noise giving rise to significant adverse impacts on health and quality of life; and ensuring the integration of new development with existing businesses.
14. For the above reasons, I conclude that the impact of noise from commercial premises on the intended occupiers of the proposed development would be acceptable and consequently that prior approval should not be refused on this matter.

Other matters

15. The site is within the zones of influence of the Penhale Dunes Special Area of Conservation (SAC) and the Fal and Helford SAC. The submitted evidence indicates that the appeal scheme would, in combination with other plans/projects, have a likely significant effect on the SACs. However, as set out in the Council's European Sites Mitigation Supplementary Planning Document, mitigation can be provided to avoid such development adversely affecting the integrity of designated sites.
16. Article 3(1) of the GPDO grants planning permission for the classes of development described as permitted development in Schedule 2 subject to Regulations 75-78 of the Conservation of Habitats and Species Regulations 2017 (as amended) (Habitats Regulations). This effectively imposes a pre-commencement condition on all such development that would affect a European protected habitat. This means that the appeal proposal cannot be lawfully begun until the developer has made an application to the Council under Regulation 77 and the Council has confirmed in writing that it is satisfied that the development would have no adverse effect on the integrity of the habitat. Although this specific process has not yet been completed in respect of the appeal proposal, a Regulation 77 application may be submitted and approved after prior approval is given.
17. During the course of the appeal, the Council advised that in order to mitigate any impacts under the Habitat Regulations, prior approval applications should be accompanied by a section 111 form and payment rather than applicants making a subsequent separate application under Regulation 77 of the Habitats Regulations. Following this, the appellant provided the Council with a s111 agreement and the financial contribution needed to mitigate the effect of the development. However, whilst this may be the Council's preferred route and a

financial mitigation contribution has now been provided, the requirement to make a separate Regulation 77 application to the Council prior to commencement of development – and the option to submit the Regulation 77 application either before or after the granting of any prior approval – remains by virtue of Regulations 75-78. If necessary, the required mitigation could also have been secured at that stage by similar means.

18. Accordingly, with Article 3(1) and Regulations 75-78 securing a separate process by which such development only proceeds where it has been confirmed via a Regulation 77 approval from the Council that there would be no adverse effect on the integrity of designated sites, it is not necessary to secure the mitigation as part of the appeal proposal. In addition, although the applicant has suggested that the mitigation could be secured by means of a condition attached to the grant of prior approval, paragraph W(13) of schedule 2 of the GPDO sets out that conditions attached to prior approvals must be reasonably related to the subject matter of the prior approval. Consequently, it is not possible to attach such a condition because it would not be related to a prior approval matter.
19. Despite the financial contribution now having been provided, the process in this instance nevertheless still requires the developer to submit a Regulation 77 application and receive written notification of the approval of the Council prior to commencement of development. This process also allows me to be satisfied that the appeal proposal would not adversely affect the integrity of the SACs.
20. Article 3(9A) sets out that Schedule 2 of the GPDO does not grant permission for, or authorise any development of, any new dwellinghouse (a) where the gross internal floor area is less than 37 square metres in size; or (b) that does not comply with the nationally described space standard issued by the Department for Communities and Local Government on 27th March 2015. In this instance, while all the proposed flats would have a gross internal floor area of 37 square metres or more, flats 5 and 6 – at 37.1 and 37 square metres respectively – should have shower rooms rather than bathrooms in order to comply with the nationally described space standard. However, the notes in the nationally described space standard set out that furnished layouts are not required to demonstrate compliance and it seems to me that there is no reason why the flats could not be provided with showers rather than baths. Although the submitted evidence indicates that the appellant would install additional internal partition acoustic insulation in order to conform to new build development standards and which would be inspected by Building Control, the appellant has indicated that acoustic insulation and various other items would be installed between the relevant compartment walls/floors. Accordingly, I am satisfied that the proposed flats could be constructed to comply with the nationally described space standard.
21. The appeal site is situated within the Truro Conservation Area and there are a number of listed buildings in the vicinity, including the grade I listed cathedral and various grade II listed buildings including the adjoining building on St Mary's Street. However, the Council does not allege that the development would have an adverse effect on any of these assets. Having considered the development and visited the site, I concur with that view and find that the development would preserve the character and appearance of the conservation area and would not harm the significance of designated heritage assets.

22. A number of other matters have been raised by third parties, including in relation to the proposed development and construction/refurbishment works disrupting access to and use of Vertigo and its signage, and that planning policies in the adopted local plan would be relevant if the appeal proposal were for a planning application. However, as the appeal relates to prior approval, the matters for consideration are restricted to those set out in the relevant paragraphs of the GPDO. Accordingly, the considerations for the decision maker in cases such as this are limited and do not allow for the above matters to be taken into account.

Conclusion and Conditions

23. For the above reasons, I conclude that the appeal should be allowed and prior approval granted.
24. Any development permitted under Class O of Schedule 2, Part 3 of the GPDO is subject to the condition O.2(2)(a) which specifies that the development shall be completed within a period of 3 years starting with the prior approval date. Accordingly, the Council's suggested time condition is not necessary. Given I have listed the submitted plans in my decision and Paragraph W(12) of Schedule 2, Part 3 of the GPDO requires development to be carried out in accordance with the details submitted, the Council's suggested plans condition is also unnecessary. I have therefore declined to impose these conditions. However, on the basis that Paragraph W allows the granting of prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval, I have imposed the Council's suggested condition relating to noise mitigation measures because it is reasonable and necessary.

T Gethin

INSPECTOR