



Appeal Decision

Site visit made on 10 May 2022

by Helen Davies MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: Tuesday 7 June 2022

Appeal Ref: APP/E0345/W/21/3288185

County House, 17 Friar Street, Reading, United Kingdom, RG1 1DB

- 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.
 - The appeal is made by BAE Systems Pension Fund Trustees Limited against the decision of Reading Borough Council.
 - The application Ref 211214, dated 21 July 2021, was refused by notice dated 10 September 2021.
 - The development proposed is change of use from 'office' (formerly Class B1(a)) to 'residential' (Class C3) (23 units) under Class O, Part 3, Schedule 2 of the GDPO.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 made changes to the Town and Country Planning (Use Classes) Order 1987. Under these changes, offices which were previously Class B1, became part of Class E (Commercial, Business and Service). Subsequent changes to The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) replaced permitted development rights to convert from offices to residential under Part 3, Class O, with a new Class MA, which allows for a range of commercial uses to convert to residential. Transitional arrangements set out that applications for prior approval under Class O could not be made after 31 July 2021. The application subject to this appeal was made on 21 July 2021 so falls to be considered under Class O.
3. The appellant submitted an Environmental Noise Survey, Noise Break-In Assessment and Sound Insulation Scheme, dated July 2021 (noise report 1), with the application. Measurements for noise report 1 were undertaken between 2 and 5 July 2021. However, the Council raised concerns about the noise measurements because Covid 19 restrictions at that time meant bars and restaurants were operating at reduced capacity, and nightclubs were not permitted to open. In response to this concern, measurements were taken again between 8 and 11 October 2021, after restrictions ended, with an updated report, dated October 2021 (noise report 2) submitted with this appeal. Taking into account the deadline for submitting an application under Class O, and the date for lifting Covid restrictions, it would not have been practical to produce noise report 2 earlier. The information is directly relevant to the main issue and interested parties have had the opportunity to comment on it. I have therefore considered noise report 2 as part of this appeal.

Main Issue

4. Schedule 2, Part 3, Class O of the GPDO permits 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). This is subject to prior approval for, amongst other things, the impacts of noise from commercial premises on the intended occupiers of the development. Having regard to the Council's sole reason for the refusal of prior approval, this has informed the main issue of the appeal.

Reasons

5. The site is located within central Reading in an area featuring a mix of commercial and residential uses, with a number of busy roads. The five storey appeal building is occupied by offices at upper floors and a bar/restaurant (Pitcher and Piano) and a nightclub (Q Club) at ground floor.
6. The principle of residential uses co-existing with commercial uses in the town centre is not in question. However, it is common ground that in this case, the ground floor uses would be a source of noise that would affect the proposed residential uses, with the site affected by significant levels of entertainment noise to the front and commercial plant noise to the rear.
7. Paragraph 185 of the National Planning Policy Framework (the Framework) seeks to ensure that planning decisions avoid noise giving rise to significant adverse impacts on health and the quality of life¹. In addition, Paragraph 130 requires developments to create places with a high standard of amenity. Paragraph 187 of the Framework specifies that planning decisions should ensure that new development can be integrated effectively with existing businesses, and that existing businesses should not have unreasonable restrictions placed on them as a result of development permitted after they were established. It also says that where an existing business could have a significant adverse effect on new development in its vicinity, the applicant (or 'agent of change') should be required to provide suitable mitigation.
8. On the basis of the submitted documents, I am satisfied that noise reports 1 and 2 present an accurate assessment of the measurements taken on the specified dates. I am also satisfied that the type and level of activity which was taking place in the ground floor commercial premises during the monitoring periods was sufficiently representative of site activity. However, it is still necessary to consider if all potential noise impacts have been fully assessed and if suitable mitigation has been proposed.
9. Noise report 1 included an assessment of noise break in through the roof and elevations and proposed a sound insulation scheme in mitigation. Noise report 2 added consideration of noise breakthrough between floors and updated the proposed mitigation. An outline of the proposed mitigation is provided, which includes the specification that glazed elements would need to meet to achieve the necessary noise mitigation in habitable rooms², along with the provision of alternative ventilation.

¹ The Noise Policy Statement for England (2010) says 'quality of life' is a subjective measure of emotional, social and physical well-being, which can be impacted by annoyance and sleep disturbance.

² The windows specification is similar in noise reports 1 and 2, but with thicker glazed units proposed in report 2.

10. Noise report 2 acknowledges the potential for noise to break through the floor from the bar and club to the proposed dwellings above and to adversely impact future occupants. It outlines mitigation measures. However, the report states that the predicted noise levels associated with the bar were taken from a survey of a 'similar facility' and goes on to make assumptions about the construction of the existing floors and ceilings. From this, it seems that an assessment of the actual noise from the Pitcher and Piano and its breakthrough to floors above at this particular site has not been undertaken. There is also no specific assessment of the noise breakthrough between floors from the nightclub, which may include higher levels of low frequency bass sound.
11. The timing and nature of the noise is also relevant. Planning Practice Guidance (PPG) sets out that the subjective nature of noise means there is not a simple relationship between noise levels and the impact on those affected. It notes that some types and levels of noise will cause a greater adverse effect at night because people tend to be more sensitive as they are trying to sleep and there is generally less background noise. High and low frequencies also cause greater impact. I am informed that the Pitcher and Piano is licensed to open and play live and recorded music until 3am, seven days a week, and that Q Club closes at 3am on a Friday and 4am on a Saturday. The summary in noise report 1 and 2 shows that at measuring position 1 (MP1) at the front of the building, in both July and October, the maximum sound level during the monitoring period (L_{AMax,T}) was recorded between 11pm and 2.30am, reaching over 100db . Also at MP1, the equivalent continuous noise level over the time period (L_{Aeq,T}) was also highest at night (at between 73 and 76db on 4 of the 5 nights). Exposure to noise at night can cause annoyance and sleep disturbance, which affects quality of life and can adversely affect health.
12. Whilst the noise reports set out the noise reduction that would need to be achieved by the roof, windows and floors, full details of any proposed scheme and how it would be implemented have not been provided. In addition, questions remain about whether noise breakthrough between floors has been fully assessed. Therefore, on the basis of the information provided, I have insufficient evidence to be able to conclude that all potential noise impacts have been fully assessed or that the proposed mitigation would sufficiently protect the living conditions of future residents.
13. From the wording of paragraph O.2(1)(d) of the GPDO, which deals with the conditions subject to which prior approval is granted, the effect of a proposal on living conditions is implicit in the considerations. Within this context, the manner in which it is proposed to mitigate the noise is an integral part of assessing the potential effect of noise on future occupiers.
14. Evidently, for windows to provide the necessary noise mitigation, they would need to be closed. There is no formal policy basis in the Framework that precludes the use of sealed windows and sealed windows need not necessarily result in unacceptable living conditions. However, in this case the appeal proposal specifically does not include sealed windows. Noise report 2 states that "windows should remain openable at the resident's discretion, however, if noise levels breaking into the development are then deemed too loud, they can rely on the mechanical system for appropriate ventilation and prevention from overheating". The site currently has sash style windows at upper floors to the front and it is unclear if these would be replaced or adapted as part of the proposed noise mitigation.

15. The PPG sets out that noise exposure would be described as having a 'significant observed adverse effect' where the noise causes a material change in behaviour such as keeping windows closed for most of the time. It goes on to say that the planning process should be used to avoid this through measures such as the choice of sites or by altering design and layout. In addition, case law³ has considered the matter of windows as part of noise mitigation, and the Court of Appeal found that any point about noise and open windows was a matter to be taken into account in deciding whether noise levels would be acceptable. In discussing the case, the judge commented that residents would be likely to open their windows in fine weather, and if they did, increased levels of noise from the nearby music venue might fuel complaints.
16. For the development subject to this appeal, it cannot be assumed that future occupiers would choose to keep windows closed, even during periods of high noise generation from the commercial premises below. A planning condition seeking to control the actions of future occupiers with regard to opening windows would not be reasonable or enforceable. The ability to open the windows would, therefore, undermine the effectiveness of the proposed mitigation scheme. In turn, this could lead to noise complaints and pressure for restrictions to be placed on the existing commercial premises at ground floor, such that unreasonable burdens might be placed on them, contrary to the requirements of Paragraph 187 of the Framework.
17. The appellant has suggested that submission of full details of all of the measures to be taken to acoustically insulate the proposed dwellings could be secured by a planning condition. Paragraph W(13) of Schedule 2, Part 3 of the GPDO allows for conditions to be imposed that are reasonably related to the subject matter of the prior approval, so could, in principle, be imposed in this case. However, the matter of noise mitigation is in itself a condition of the development permitted by Class O of the GPDO, is the principal matter in dispute between the parties, and goes to the heart of the main issue in this appeal. In these circumstances it would not be appropriate to require the submission of a detailed noise mitigation scheme under a condition, as this would, in effect, reopen the prior approval process.
18. The appellant makes reference to other appeals⁴ and Council decisions⁵ relating to prior approvals where noise was a main issue, which confirm that conditions can be attached if appropriate. Whilst details of these cases are not before me, on the basis of the provided information, it is evident that one of the appeal decisions relates to a site predominantly above a supermarket, and the other noted the absence of significant local commercial noise sources. Therefore, these sites are not comparable to the appeal site in terms of the potential noise impacts. Regarding the Council decisions, other than being in the city centre, no information has been provided on the noise environment of the sites, or on the scale, nature and relative position of any commercial premises which may impact on them. Regardless of this, each case must be considered on its own merits and impacts and direct parallels are not easily drawn.

³ Pauline Forster v Secretary of State for Communities and Local Government & Tower Hamlets London Borough Council, Swan Housing Association Limited Ref: [2016] EWCA Civ 609

⁴ APP/G5180/W/19/3237984 and APP/Y0435/W/20/3252160

⁵ Application Refs 170979; 182109; 192059; 190602

19. With the above I mind, the proposal would not satisfy condition O.2 (d) of Class O, Part 3, Schedule 2 of the GPDO in that intended occupiers would be subject to an adverse impact concerning noise from commercial premises. Insofar as it is relevant to the main issue, the proposal would conflict with the aims of paragraphs 185 and 130 of the Framework which together, and amongst other things, seek to protect residents from adverse noise impacts and ensure that new development provides a high standard of amenity. In addition, the proposal would fail to accord with paragraph 187 of the Framework which seeks to ensure that new development would be effectively integrated with and would not lead to unreasonable restrictions being placed on existing businesses.

Other Matters

20. Whether or not the appeal site is in the Market Street Conservation Area is not a prior approval matter concerning Class O. In addition, the manner of the Council's engagement with the appellant is not for me to consider in this appeal decision. It should be taken up separately with the Council as an administrative matter.

Conclusion

21. For the reasons given above and taking into account all other matters raised, I conclude that the appeal should be dismissed.

Helen Davies

INSPECTOR