



Appeal Decision

Site visit made on 6 June 2022

by Rachael Pipkin BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 June 2022

Appeal Ref: APP/A1720/W/21/3281629

17 Queens Road, Fareham PO16 0NW

- 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 Mr Jacob Hoare against the decision of Fareham Borough Council.
 - The application Ref P/21/0118/PC, dated 21 January 2021, was refused by notice dated 5 March 2021.
 - The development proposed is change of use of ground floor office to 1 bedroom flat C3.
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Decision

1. The appeal is allowed and 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) (the GPDO) for change of use of ground floor office to 1 bedroom flat C3 at 17 Queens Road, Fareham PO16 0NW in accordance with the terms of the application, Ref P/21/0118/PC, dated 21 January 2021, and subject to the following conditions:
 - 1) The development must not be begun until the developer has received written notification of the approval of the local planning authority under regulation 77 of The Conservation of Habitats and Species Regulations 2017.
 - 2) The development hereby permitted shall be carried out in accordance with the following plans and drawings: 1916-01, 1916-02, 1916-03 and 1916-L01.

Background and Main Issue

2. Paragraph 0.2(1) of the GPDO sets out that development under Class O is permitted subject to the condition that before beginning the development, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as regards the transport and highways impacts of the development; contamination risks on the site; flooding risks on the site; impacts of noise from commercial premises on the intended occupiers of the development; and the provision of adequate natural light in all habitable rooms of the dwellinghouse.
3. The Council is concerned about the impacts of noise from commercial premises. Thus, the main issue is whether or not the proposed development would

provide satisfactory living conditions for future occupants, with particular regard to noise.

Reasons

4. Number 17 Queens Road (No 17) is a two-storey office building. It is located within a mixed use area comprising residential and community uses, including a Masonic hall and a church. A reasonably large tyre fitters, car mechanic and MoT garage lies to the east.
5. Prior approval is sought for the conversion of part of the ground floor of an office building into a one bedroom studio flat. The Council is concerned about noise from nearby commercial uses, in particular the garage, indicated to be some 13m from the appeal proposal, on the living conditions of future occupants.
6. The appellant has submitted a Noise Impact Assessment (NIA) which assessed the potential sound impact of the garage on the proposed residential unit. The assessment was conducted in accordance with British Standard *BS4142:2014+A.1:2019 Methods for rating and assessing industrial and commercial sound* (BS4142). The assessment concluded that the commercial noise associated with the garage use would be +2 to +5db above background noise level.
7. The Council has not disputed the methodology nor the findings of the NIA, but considers that the level of noise arising from the garage would have a significant adverse impact on future occupants of the proposed unit.
8. BS4142 explains that when making an assessment, it is essential to place the sound in context. It goes on to advise that a difference of around +5dB is likely to be an indication of an adverse impact, depending on the context.
9. The appeal site is relatively close to the town centre and within a mixed use area. These non-residential uses would generate levels of activity at different times of day. At the time of my site visit, I observed that the area was reasonably busy with traffic passing along the road. The area is therefore not particularly quiet. In this context, the noise arising from the commercial use, notably the garage, would not adversely impact future occupants of the proposed unit.
10. In coming to this view, I am mindful of the conclusions of the NIA which states that internal noise levels within the proposed unit, on the basis of a partially open window, are likely to be controlled to around $L_{Aeq,T}$ 35dB. This would accord with guidance set out within *BS8233:2014 Guidance on sound insulation and noise reduction for buildings* which sets out that indoor ambient noise levels of dwellings during the daytime should be 35 dB $L_{Aeq,16hour}$ when resting within a living room or bedroom. With ambient noise levels 6dB lower during the night-time, this would also accord with indoor ambient noise levels for dwellings at night.
11. I conclude that the proposed development would provide satisfactory living conditions for future occupants, with particular regard to noise.

Other Matters

12. It has been suggested that the appeal property forms part of a larger planning unit, comprising the entire office building. This is not and has not been vacant for a number of years and therefore the tests for permitted development have not been met. However, there is no requirement for the building to have been vacant for a continuous period of at least 3 months immediately prior to the date of the application for prior approval under Class O of the GPDO.
13. Concerns have been raised about the compatibility of the proposed dwelling with the existing commercial units occupying the rest of the building. The presence of other offices within the building is not a consideration in respect of an application for prior approval. The only matters that can be considered are those in relation to matters set out under Paragraph 0.2(1) of the GPDO. The proximity of offices and residential units would not give rise to unacceptable noise disturbance to each other.
14. Concerns have been raised about cooking odours from the flat. However, the odours from a small residential kitchen would not give rise to a significant impact in terms of harm to other occupants of the building.
15. From 6 April 2021, Article 3(9A) of the GPDO provides that Schedule 2 does not grant permission for any new dwellinghouse where the gross internal floorspace is less than 37m². The application for prior approval pre-dated that requirement and therefore compliance with the minimum floorspace cannot be required in this case.
16. There is no requirement for development under Class O of the GPDO to provide outdoor amenity space.
17. The Council's officer report states that a condition would be imposed requiring cycle storage to be provided but provides no reasons for this. In any event, this is not included within the Council's list of suggested conditions as part of the appeal. There is nothing in front of me to indicate why such storage is necessary. In view of the proximity of the appeal property to the town centre, which is in walking distance, a condition requiring cycle parking would not be necessary in this case.
18. The freeholder has advised that it would not permit any alterations to the building structure for additional vents or extractions. Under the proposal for which prior approval is being sought there is no requirement for the provision of such equipment. Should the appellant wish to install any such equipment, this would be a private matter between the appellant and the freeholder.
19. The appeal site lies within 5.6km of the Solent coast. Within this area there are a number of Special Protection Areas (SPAs) including the Southampton and Solent Waters SPA, Portsmouth Harbour SPA, Solent and Dorset Coast SPA, Chichester and Langstone Harbours SPA and Special Areas of Conservation (SAC) including the Solent Maritime SAC, Solent and Isle of Wight Lagoons SAC. These are European sites of nature conservation importance and statutorily protected under the Conservation of Habitats and Species Regulations 2017 (Habitats Regulations).
20. Natural England has advised that all new residential development that connects to waste water treatment plants along the Solent coast will have a significant effect upon the protected sites due to increased foul water discharge and

hydrological changes arising from nitrates. Furthermore, additional residential development will give rise to likely significant effects on the SPAs through increased recreational disturbance. Mitigation would be required to mitigate such harmful impacts.

21. Article 3(1) of the GPDO 2015 grants planning permission for the classes of development described as permitted development in Schedule 2 subject to Regulations 75 to 78 of the Habitats Regulations.
22. Effectively, Article 3(1) imposes a pre-commencement condition on all development that is permitted by the GPDO and 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 local planning authority has confirmed in writing that it is satisfied that the development would have no adverse effect on the integrity of the habitat.
23. 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. I have therefore imposed a condition to this effect for the avoidance of doubt.

Conditions

24. Paragraph O.2(2) of the GPDO requires that the development must be completed within a period of three years starting with the prior approval date. In addition to the condition already referred to, a plans condition is necessary in the interests of certainty.

Conclusion

25. For the reasons given above I conclude that the appeal should be allowed and prior approval should be granted.

Rachael Pipkin

INSPECTOR