



Appeal Decision

Site visit made on 20 June 2022

by B Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 July 2022

Appeal Ref: APP/K0235/W/21/3288726

239 Ampthill Road, Bedford MK42 9QG

- 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 TJD Trade Ltd against the decision of Bedford Borough Council.
 - The application Ref 21/01164/CPNO, dated 19 April 2021, was refused by notice dated 15 June 2021.
 - The development proposed is to convert the annex of an existing office (B1 use) to residential consisting of 12 x 2 beds and 6 x 1 bed flats.
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Decision

1. The appeal is allowed and planning permission is granted to convert the annex of an existing office (B1 use) to residential consisting of 12 x 2 beds and 6 x 1 bed flats at 239 Ampthill Road, Bedford MK42 9QG in accordance with the terms of the application, Ref 21/01164/CPNO, dated 19 April 2021, and the details submitted pursuant to Article 3(1) and Schedule 2, Part 3, Paragraph O.2(1), subject to the condition that the development must be completed within a period of three years from the date of this decision in accordance with Paragraph O.2(2)(a) and the following condition:
 - 1) A scheme of noise mitigation measures shall be submitted to and approved in writing by the Local Planning Authority, prior to the occupation of the flats on the northwestern side of the building. The scheme of measures shall include an active mechanical ventilation system serving the flats on the western side of the building and shall include a detailed specification comprising plans showing the routing of all pipework, vents and fans, and a technical specification of the equipment including details of airflow and air changes so that with windows closed, internal noise levels within habitable rooms of those flats on the northwestern side of the building shall not exceed the daytime design target of 35dB LAeq,T whilst adequate levels of ventilation are maintained to avoid overheating within the flats. The approved noise mitigation measures shall thereafter be installed and fully operational before any of the affected flats are first occupied.

Preliminary Matters

2. The principle of development is established by the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). The provisions of Schedule 2, Part 3, Class O of the GPDO do not require regard to be had to the development plan. However, I have had regard to the policies of

the development plan only in so far as they are a material consideration in connection with noise matters where relevant to the case.

3. The Town and Country Planning (General Permitted Development)(England) (Amendment) (GPDO) Order 2021 came into force 1 August 2021, but was subject to saving and transitional provisions. Class O is subject to condition O.2(1) that states that where the proposed development includes a change of use of a building from a commercial premises, the developer must apply for a determination under sub-paragraph (2)(b) on or before 31 July 2021. As such, it has been necessary to determine this appeal under these provisions.
4. Prior Approval was given by the Council in 2017¹ for the building, including the annex, to be changed to residential use. This expired unimplemented.

Background and Main Issues

5. Schedule 2, Part 3, Class O permits the change of use of a building and any land within its curtilage from a use falling within Class B1(a) (offices) of the Use Classes Order to a use falling within Class C3 (dwellinghouses) of what was the Schedule to the Town and Country Planning (Use Classes) Order 1987. This is subject to criteria under paragraph O.1 and conditions under paragraph O.2. It is not disputed between parties that the proposal meets the requirements of Paragraph O.1 of the GPDO. As such, it constitutes Permitted Development under Class O, subject to the prior approval of the matters listed at paragraph O.2 of the GPDO.
6. Paragraph O.2(1) relates to transport and highway impacts, contamination risks, flooding risks, the effect of the impact of noise from commercial premises on the intended occupiers of the development and the effect of natural light. The Council finds that the noise from adjacent commercial units would result in a harmful effect on the living conditions of future occupiers in conflict with paragraph O.2(1)(d).
7. Accordingly, the main issue is whether the proposed change of use would comply with the conditions imposed under paragraph O.2(1)(d) for development permitted under Class O.

Reasons

8. Technology House is a four and five storey office building. This stands within spacious grounds with car parking in front and behind and includes a large, landscaped area to its frontage. The annex, the subject of this appeal, is the northeast wing of the building and represents around a third of the total floor area of the building.
9. The appellant's Noise Assessment² explains that the site is within a mixed-use area and finds a background noise level of around 44dB. A noise survey was undertaken during the working week on two days. The noise report Assessment identified that the most significant noise sources were from 'U Systems plant' a manufacturing premises behind the site and 'European Metal Recycling' (EMR) on Cauldwell Walk. Noise reported from 'U systems plant' appears largely concentrated around Inverter units, with a number of extractors and vent units causing a relatively low-level hum that do not run overnight.

¹ Prior Approval Reference: 17/02858/CPNO

² Noise Impact Assessment, Independent Environmental Consultants, dated 14/4/21

10. Whereas, EMR was found to create prolonged and audible noise levels, consisting of waste tipping, processing and handling. The site is around 280 metres from the appeal building. The noise survey results were increased, with a 4dB penalty, to account for the perceptible nature of the bangs and clatters from metal handling. The Assessment further adjusted the specific sound levels at the measurement location to account for the greater distance to Technology House and the height to third floor level, resulting in a predicted level of 53dB and a maximum incidence of 72dB. These adjustments seem reasonable and necessary to take account of the context of the noise generator and the position of receptors.
11. The appeal site is within an urban area, with a main highway to the front and railway line to the rear. Both of which would raise the background noise and apply intermittent sounds that add to the overall sound environment. Furthermore, EMR is a substantial distance from the site, with a car park and wooded area between the sound receptor and the industrial facility. During my visit, whilst offering only a snap-shot in time, I noted sound levels both within the car park and the building. I observed the levels from EMR were clearly audible but not so loud as to be considered invasive. Also, within this urban context, I would expect future occupiers to tolerate heightened sound levels. As a result, future occupiers would be unlikely to be largely affected by the sound levels found to the rear of the site.
12. Paragraph 187 of the National Planning Policy Framework (The Framework) states that where the operation of an existing business could have a significant adverse effect on new development, the applicant is required to provide suitable mitigation. However, the sound levels relate to daytime industrial noise which cease overnight, limiting the overall capability of sound intrusion. Furthermore, the annex is a modern building that includes double-glazed windows with in-frame trickle vents. These units result in a sound reduction of 20dB when closed and 15dB when open. BS 8233:2014, applies to the design of new and refurbished buildings undergoing a change of use, this requires internal ambient noise levels to be a maximum of 35dB, which is achieved with the windows closed and vents open.
13. Consequently, the existing glazing attenuation would provide adequate sound reduction to ensure occupiers would be largely undisturbed by the recorded sound levels when the windows are closed. Additionally, a condition could be applied to ensure that mechanical ventilation would provide comfortable living conditions for future occupiers if they do not wish to open a window for ventilation. The existing sound attenuation, and the installation of mechanical ventilation, would ensure that the living conditions of future occupiers would not be adversely affected by noise.
14. The Framework states that existing businesses should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Nonetheless, in this case existing residential properties including those on Ryswick Road, are much closer to the facility. Accordingly, the proposed scheme would not increase the sensitivity of residential uses within the vicinity of EMR. Although the appellant has provided no evidence to demonstrate engagement with EMR, such engagement is not necessary based on the recorded noise levels, sound attenuation within the existing building and the mitigation proposed. As such, it would be unlikely that EMR would have

new restrictions placed on it following the approval of the proposal. The proposal would therefore integrate well with the existing environment.

15. Accordingly, the proposal would comply with paragraph O.2(1)(d) of the GPDO.

Other Matters

16. The Council also identified that the Waste Management Plan was unclear, and the use of the two external storage areas and internal waste rooms were not sufficiently detailed in capacity or use to meet its policies with respect to public health. However, these matters are not provisions of Class O.2 and therefore weigh neither for nor against my consideration of the operation of this prior approval provision. Furthermore, even if a recycling collection lorry were parked on the highway, I am unconvinced that this would have a material effect on the safety of the highway.

Conditions

17. Paragraph O.2(2)(a) requires the proposed development to be completed within three years of the date of the decision. Furthermore standard conditions are set out in paragraph W.(12). These require the development to be undertaken in accordance with the approved plans. Also, paragraph W.(13) allows for additional conditions to be attached that are reasonably related to the subject matter of the prior approval. To comply with paragraph O.2(1) it is necessary for the appellant to install mechanical ventilation in the interests of the living conditions of future occupiers.

Conclusion

18. For the above reasons, the appeal is allowed, and Prior Approval granted.

B Plenty

INSPECTOR