



Appeal Decision

Site visit made on 9 August 2022

by L Wilson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 August 2022

Appeal Ref: APP/P4605/W/22/3294919

6-8, Branston Street, Birmingham B18 6BP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr and Mrs Michael Jeffries, Trojan Findings Ltd, against the decision of Birmingham City Council.
 - The application Ref 2021/07946/PA, dated 12 September 2021, was refused by notice dated 9 December 2021.
 - The development proposed was originally described as conversion of two vacant workshops to two live work units - resubmission.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - The effect of the proposed development on the character of the Jewellery Quarter Conservation Area (CA), having regard to local planning policy;
 - Whether the proposed development would provide acceptable living conditions for future occupants, having regard to noise, air quality, privacy and the provision of internal space; and
 - The effect of the proposed development on the operation of existing businesses.

Reasons

Character of the CA

3. The appeal site relates to a two-storey building which overlooks a courtyard accessed from Branston Street. The site is located within the area defined as the golden triangle part of the CA.
4. This part of the CA is characterised by a mix of uses. These include residential, jewellery related businesses, small metal trades, restaurant, commercial, manufacturing uses. Buildings are primarily two and three storeys in height but there are also taller buildings.
5. The appellant asserts that jewellers tend to directly employ specialist jewellery workers in their retail units and the greatest demand is for live only units especially from students or businesspeople working in the area. They have also provided a copy of a letter from a local property agent and jewellery trader. In

- addition, they state that it is better for the units to be used for residential purposes rather than being redundant.
6. I recognise that since the CA was introduced, it is likely that the jewellery trade, and local area, has altered. Although the letter from the property agent outlines feedback from enquiries relating to the marketing of the appeal units, it does not demonstrate that the unit was marketed at an appropriate rate and for an appropriate time period.
 7. The proposed development would change the use of the industrial workshops to two live-work units. Policy 2.2 of the JQCACAMP highlights that residential development has significantly enhanced potential property prices which threatens the continued industrial use of manufacturing premises and reduces the amount of workspace available to the traditional industries in the quarter. The integrity of surviving industrial and commercial premises, within this part of the CA, make an important contribution to the character and local distinctiveness of the CA and contributes to this unique heritage asset.
 8. The proposal would reduce the amount of commercial space and would be contrary to Policies 2.2 and 2.4 of the JQCACAMP. This is due to the proposed residential use and ratio of living to working space. For these reasons, the proposal would harm the local distinctiveness of this part of the CA and would cause harm to the character of the CA.
 9. The appeal site is not conspicuous from public vantage points. The scheme also proposes minor changes to the external appearance of the buildings. Therefore, visually the scheme would not harm the CA.
 10. Paragraph 199 of the National Planning Policy Framework (the Framework) states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Framework paragraph 200 states that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. Where there is less than substantial harm, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
 11. In this regard, my attention has been drawn to a legal judgement¹. Given the scale of the proposal within the context of the CA as a whole, the scheme would retain a work element, and limited visual impact, the level of harm would be less than substantial, nevertheless it is of considerable importance and weight.
 12. The appellant states that there would be benefits arising from the two live-work units which would contribute towards housing supply. Based on the evidence submitted, the public benefits associated with the proposed development are not sufficient to outweigh the harm that I have identified.

¹ R.(oao James Hall and Company Limited) v City of Bradford Metropolitan District Council and Co-Operative Group Limited [2019] EWHC 2899

13. Given the above and in the absence of any defined significant public benefit, I conclude that, on balance, the proposal would fail to preserve the character of the CA. Therefore, it would fail to satisfy the requirements of the 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, section 16 of the Framework and conflicts with Policies GA1.3 and TP12 of the Birmingham Development Plan (2017) (BDP). These seek, amongst other matters, to ensure new development supports and strengthens the distinctive character of the area with the introduction of an appropriate mix of uses. As a result, in this regard, the proposal would not be in accordance with the development plan.

Living conditions

14. As outlined above, there are a number of different uses close to the appeal site. My attention has been drawn to noise sources including an electroplating manufacturer, condenser and music from a restaurant known as Devon House which has a license until 06:00. I recognise that residential units separate Devon House and the appeal site.
15. There are existing residential units and live-work units close to the appeal site. The Council state that the planning applications relating to these units did not assess noise and disturbance. Even though there are existing residential units nearby, that should not automatically mean that further residential units are acceptable.
16. Noise and air quality reports have been submitted. The Council has not produced any counter surveys. Nonetheless, the Council's Environmental Pollution Control officer has reviewed these reports and set out their concerns. They state that there are no BS4142 calculations, unattended monitoring is not suitable, the noise relating level would indicate significant adverse impact and the mitigation measures would not be suitable with windows open.
17. In relation to the air quality report, the officer states that the electroplating business has an environmental permit for surface treatment of metals issued by the Environment Agency, rather than the Council. In addition, there appears to be a discharge stack in close proximity to the proposed development which the report does not adequately assess. Furthermore, insufficient information has been submitted relating to residual risks from the storage and handling of chemicals in close proximity to the proposed residential uses.
18. The drawings indicate that the work element of unit 2 would be below the live element on unit 3. This could result in noise and disturbance adversely affecting future occupiers of unit 3 if the occupiers of unit 2 were working unsociable hours.
19. The proposed drawings also show that the bedroom of unit 3 would face towards the stairs area of unit 2. This is the only window which serves that bedroom. The scheme includes a new staircase and an enclosed entrance. The appellant asserts that the impact would be minimal given the room would ordinarily be used at night time and the window will be high level. The height of the window is not clearly shown on the drawings. Given the distance of the window to unit 2, this would result in the perception of being overlooked and unacceptable levels of privacy. I am not satisfied that the arrangement would provide acceptable living conditions for future occupiers of unit 3.

20. The appellant sets out the size of the units. They assert that the scheme would provide adequate internal space and would not involve major alteration to maintain character and appearance. Although the units would include work spaces and are not significantly below the space standards, these are minimum requirements. The units would feel cramped and would not provide adequate space for occupiers' day-to-day needs
21. For these reasons, the appellant has not satisfactorily addressed the issues raised by the Environmental Pollution Control officer. The submission fails to demonstrate that the proposal would provide acceptable living conditions for future occupiers. I do not consider that planning conditions can adequately address these matters. The proposed development would therefore provide unacceptable living conditions for future occupants, having regard to noise, air quality, privacy and the provision of internal space.
22. Consequently, the scheme would conflict with Policy PG3 of the BDP, Policies DM2, DM6 and DM10 of the Council's Development Plan Document (DPD) and saved Policy 3.14C of the Birmingham Unitary Development Plan (2005). These seek, amongst other matters, to ensure developments are designed, managed and operated to reduce exposure to noise and vibration. In addition, new development should provide for adequate day to day living and working conditions for those who will be occupying it and set out standards for residential development. It would also conflict with the Framework which states developments should create places with a high standard of amenity for existing and future users and also ensure that new development is appropriate for its location taking into account the likely effects of living conditions.

Existing businesses

23. The scheme would introduce further residential properties in an area close to existing industrial and commercial uses. The Council state that complaints have been received from neighbouring residents regarding noise. The appellant suggests that its source is not reliable and cannot be afforded any weight. They also highlight existing businesses have not objected to the scheme.
24. Framework paragraph 187 states that decisions should ensure that new development can be integrated effectively with existing businesses and community facilities. Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Where the operation of an existing business or community facility could have a significant adverse effect on new development (including changes of use) in its vicinity, the applicant should be required to provide suitable mitigation before the development has been completed.
25. As the integrity of surviving industrial and commercial premises make an important contribution to the CA, it is essential that new development does not threaten the continued traditional uses nearby. There are existing residential units close to the industrial and commercial uses. Increasing the number of residential units in close proximity to existing industrial and commercial uses could result in compatibility issues.
26. Given my findings in the previous section, there is potential that the current businesses could have a significant adverse effect on the occupiers of the proposed residential units and there is no compelling evidence to demonstrate that suitable mitigation could be provided.

27. For these reasons, the appellant has not robustly demonstrated that the proposal can integrate effectively with the operation of existing businesses. Consequently, it would conflict with paragraph 187 of the Framework.

Conclusion

28. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other material considerations, the appeal does not succeed.

L Wilson

INSPECTOR