



Appeal Decision

Site visit made on 25 October 2022

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 November 2022

Appeal Ref: APP/G5180/W/21/3288234

Compass House, 36 East Street, Bromley BR1 1QU

- 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 (as amended).
 - The appeal is made by Mrs M Hooson, F.D Voyce and Son Ltd against the decision of the Council for the London Borough of Bromley.
 - The application Ref 21/03343/RESPA, dated 29 July 2021, was refused by notice dated 16 September 2021.
 - The development proposed is described as "The application proposes the conversion of the existing office space on first, second and third floors to 13 residential flats. The existing building facades consist of large glazed windows across their entire width, which will provide adequate natural light to the proposed dwellings."
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Subject to various limitations and conditions the provisions of Schedule 2, Part 3, Class O of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)(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) of the Schedule to the Use Classes Order, to a use falling within Class C3 (dwellinghouses) of that Schedule. The Council is concerned about the impact of noise from existing uses/commercial premises on the intended occupiers of the proposed development and would therefore not comply with Schedule 2, Part 3, Class O paragraph O.2.(1)(d) of the GPDO.
3. The appellant submitted the scheme to the Council prior to the 31st July 2021 for determination under Class O of the GPDO. The Council therefore assessed the scheme under the provisions of Class O, and I have done the same.
4. The principle of development is established by the GPDO 2015 and the provisions of Schedule 2, Part 3, Class O require decision makers to have regard to the National Planning Policy Framework 2021 (the Framework) so far as it is relevant to the subject matter of the prior approval, as if the application were a planning application. Whilst I have had regard to the guidance within the Framework, this is only where it is relevant to matters of noise. I note the Council has referred to Paragraph 11(d) of the Framework, however whilst the Council admit that they are not meeting their housing land supply, this matter is not a material consideration and is largely irrelevant in respect to this prior approval appeal as it does not relate to noise issues.

5. The description of development in the heading above has been taken from the planning application form. However, the appellant at Part E of the appeal form, refer to an alternative description of the development. Neither of the main parties has provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the one given on the original planning application.

Main Issue

6. The main issue is the impact of noise from the commercial premises at the ground and basement floor levels on the intended occupiers of the proposed development.

Reasons

7. Bromley Town Centre is a mixed-use area with commercial/retail units located at the ground floor level, and generally offices and residential units located on upper floors. The appeal site (Compass House) is a four-storey building located on the eastern side of East Street in the town centre. The upper floors are currently occupied as offices, whilst the ground floor is in use as a tanning salon (Sunshineco) and a bar/restaurant (Copper Ceylon) with a nightclub (Vuvu) located at the basement level. The proposal seeks to provide 13 flats (11 x one bedroom and 2 x two bedroom units) in the existing upper floors.
8. Paragraph 185 of the Framework is clear, that proposals should amongst other aspects, avoid noise giving rise to significant adverse impacts on health and quality of life. Paragraph 187 also makes it clear that decisions should integrate effectively with existing businesses, and where the operation of an existing business could have a significant adverse effect on new development, the applicant (or 'agent of change') should provide suitable mitigation before the development is completed.
9. Planning Practice Guidance (PPG) sets out further detailed guidance¹, including relating to the 'agent of change' principle. This includes taking into account current activities, but also those activities that businesses or other facilities are permitted to carry out, even if they are not occurring at the time of the application being made. The 'agent of change' will also need to define clearly the mitigation being proposed to address any potential significant adverse effects that are identified. Adopting this approach may not prevent all complaints from the new residents/users about noise or other effects, but can help to achieve a satisfactory living or working environment, and help to mitigate the risk of a noise nuisance being found.
10. As part of the appeal, the appellant has undertaken a revised noise assessment². The noise levels inside the building were compared to the internal noise recommendations in noise rating (NR) curves as recommended by BS8233:2014 and the night time sound pressure levels in the WHO Guidelines for Environmental Noise.
11. Measurements were undertaken on the mechanical extraction plant located at the rear of the site, and the 'break-in' levels from music and related activities associated with the commercial premises at the ground floor and basement

¹ Paragraph: 009 Reference ID: 30-009-20190722

² Acoustic Assessment prepared by Ned Johnson Acoustic Document Ref: 132122 (Revision A) dated 11th October 2021.

- levels. In terms of the extraction system, the tests showed that during operation there was no negative impact during the site survey, and it did not negatively impact upon internal sound pressure levels.
12. In regard to the entertainment activities at the ground floor and basement levels, the tests were undertaken on Friday 1st October 2021 between 2150 hrs and 0012 hrs Saturday 2nd October 2021, when both the bar/restaurant and nightclub were in use. The tests were undertaken internally on the upper floors where the proposed residential accommodation is to be situated. The noise assessment highlighted in order to achieve the required NR standards, the proposed residential use would require mitigation measures consisting of an acoustic shell construction, and provision of closed windows and secondary glazing, to safeguard against the noise break-in, particularly the low frequency break-in (bass frequencies) from the commercial premises below.
 13. From the evidence before me, it is unclear whether the sound insulation measures proposed would be adequate, as there are no quantifiable calculations on how the internal noise level criteria would be achieved. As such, it cannot be guaranteed that the additional sound attenuation measures proposed would be sufficient to control the sound transmission. Therefore, I am not persuaded that the measures detailed in the noise assessment can realistically achieve appropriate living conditions for future occupants at the site.
 14. Furthermore, the Council have raised concerns that the tests did not continue until the early hours of the morning, usually the quietest time, and so did not measure noise at the most sensitive time of night, nor did it account for patron dispersal noise. From the information before me, the nightclub has a licence until 0400 hrs, and on Friday & Saturday nights the restaurant/bar is authorised for live music until 0030 hrs and recorded music until 0200 hrs. I therefore share the concerns that the tests were concluded early. The lack of evidence regarding noise level generated past 0012 hrs, provides uncertainty in respect to the potential disturbance on any future occupiers particularly during the early hours of the morning. The differing opinions as to whether music levels would be to likely increase or decrease as the night goes on do not lead me to a different conclusion.
 15. In respect to the closing of windows and provision of secondary glazing, the PPG advises³ that in the case of new residential development, consideration should be given to whether adverse internal effects can be completely removed by closing windows, and goes on to say that a suitable alternative means of ventilation is likely to be necessary. In this case, the scheme provides trickle vents for ventilation to prevent opening windows. Whilst this ventilation strategy would allow air to circulate, windows being kept closed, particularly during the hotter months when there would be an expectation for windows to be openable, is likely to diminish the quality of life for any future residents.
 16. Whilst potential occupiers may choose to reside in such a town centre location with a full expectation of lively late night/early morning activities, the close proximity of these new residential properties to the existing evening activities would create a sensitive relationship. This could lead to potential conflict between parties, and complaints about noise which may necessitate enforcement action. Any noise nuisance reported could thus lead to pressure

³ Paragraph: 006 Reference ID: 30-006-20190722

for restrictions to be placed on the users/patrons of the commercial premises at the lower levels, such that unreasonable burdens might be placed on these users contrary to the guidance of the PPG.

17. I acknowledge that conditions could be used to ensure that otherwise unacceptable development could be made acceptable, for example on receipt of further detailed technical information. However, given the lack of assessment of the early morning noise levels, and in light of the uncertainty surrounding the success of noise mitigation at the appeal site, I cannot be sure that conditions would be sufficient to make the development acceptable and remedy the noise effects so that permission can be granted.
18. Overall, based on the above, it has not been adequately demonstrated that the impact of noise from the commercial premises at the ground and basement could be appropriately mitigated. Accordingly, the proposal would fail to satisfy provision O.2.(1)(d) of Schedule 2, Part 3, Class O of the GPDO.

Conclusion

19. For the reasons given above I conclude that the appeal should be dismissed.

Robert Naylor

INSPECTOR