

Appeal Decision

Site visit made on 24 November 2022

by G Powys Jones MSc FRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 30 December 2022

Appeal Ref: APP/P1750/W/22/3300941
101 Victoria Road, Aldershot, GU11 1JE

- 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 Santosh Gurung against the decision of Rushmoor Borough Council.
 - The application Ref 21/00947/FULPP, dated 4 December 2021, was refused by notice dated 14 April 2022.
 - The development proposed is alterations to front elevation and change of use of first and second floors to nightclub.
-

Decision

1. The appeal is dismissed.

Preliminary matters

2. The appeal property is a former bank situated within the town centre. The intention is to use the upper two floors as a night club. The main customer access point would be from Victoria Road, and an existing doorway would be widened to facilitate this. I noted at my visit that the ground floor was in commercial use.
3. The Rushmoor Local Plan 2014-2032 (LP) was adopted in 2019. Given the content of LP policy SP1, the Council has no objection to the principle of a night club use in the town centre. The policy seeks to concentrate development for leisure, entertainment, cultural, tourism, retail, supporting services, restaurants and other town centre uses within the Town Centre. Nor does the Council object to the minor elevational alteration proposed. I have no reason to disagree with the Council's stance on either of these issues.

Main Issue

4. The main issue is the effect of the development on the living conditions of the residents of neighbouring residential properties with particular reference to noise and vibration.

Reasons

5. The appeal property is a relatively modern red-bricked 3-storey building. Adjoining to the west is another lengthy, red-bricked building, comprised of commercial units on the ground floor with residential flats above. According to

the sign on the entrance door, there are 10 flats in total. Immediately to the east of the appeal property is a Victorian property with commercial use on the ground floor and several residential flats above. Thus, although sited within the town centre, the appeal property is flanked by residential development, and I noted other residential flats above commercial ground floor uses along the street. I also noted the presence a nightclub along the street to the west.

6. The appellant says that the '*...scheme would introduce noise and vibration to the site more than its previous occupant.*' That appears to me to be an understatement, given that banks are usually empty at night and the proposed hours of operation of the night club. In reality, the appellant proposes the introduction of a potentially noisy activity in very close proximity to sensitive receptors, operating at times when most people living nearby would either be trying to, or would be sleeping.
7. The application was first submitted without any supporting information as to the likely impact of the development on its residential neighbours, or any indication on the submitted plans or any other document as to possible mitigation measures.
8. It was not until over 3 months had passed before a Noise Impact Assessment (NIA) was submitted – shortly before the application's determination. The Council's objection is based on the Environmental Officer's response on consultation.
9. In summary, the NIA's authors recommend that a significant level of mitigation would be required to meet what they regard as an acceptable night-time noise level at the nearest noise sensitive receptor. Their recommendations include replacing all windows, of which there are many, in triple glazing; sound-proofing all external doors; sound-proofing all party walls and ceilings with specified systems. In addition, proposals are presented to mitigate the possible harmful effects of the externally located condenser units by reason of noise and vibration.
10. I note that no assessment was carried out on the effects of the proposed use of the terrace as a smoking area, on the effects of use of the rear entrance for access, or on possible vibration through the structure into adjoining residential buildings. Nor has the NIA taken into consideration the prospect of the windows of the adjoining residential properties being left open at night on warm summer nights, and the possible impact on internal living conditions.
11. The appellant, largely in response to comments made by the Council, suggests a change in the proposed hours of operation, albeit that the nightclub would remain open late at night and in the early hours at the week-end. The use of the terrace would be restricted to an emergency access only; a management plan is proposed and measures put in place to control access to the premises, both at the front and rear. In addition, the appellant would '*commission and appoint appropriate consultants, i.e. M&E engineers, to explore an alternative means of ventilation so that doors and windows can remain closed for acoustic performance, especially during warmer months.*'
12. The appellant considers that these suggestions and the measures recommended in the NIA could reasonably be subject to conditions imposed on

a planning permission were the appeal allowed, together with a monitoring condition.

13. I disagree that conditions would suffice in protecting the amenities of adjacent residents, based on the information provided, or in the absence of other information as noted above. In my view it is for the appellant to properly address the implications of siting a potentially disruptive use in such close proximity to residential property. Nor am I satisfied that the standard aimed for in the NIA in terms of the Breakout Noise Criteria is appropriate. I appreciate that, as provided in the report:

There is (sic) no exact guidelines to assess noise from pubs or clubs. We are basing our assessment from previous criteria set for a proposed bar/club.’^

14. The Council concerned, nor the project referred to are identified, and the noise level requirement set out at (ii) for night-time hours seems to me to be rather high. It may have been preferable to aim for a predicted level within adjacent habitable rooms.
15. I fully appreciate the appellant’s points that the proposal would entail the productive use of a partly vacant building within the town centre, that employment and economic activity would be generated. However, the evidence presented in support of the scheme is insufficient to satisfy me that the living conditions of nearby residents would not be put at risk because of noise and other disturbance. I therefore intend to adopt a precautionary approach.
16. I conclude that in the absence of convincing evidence presented in terms of impact, mitigation and management of the proposed use, it is probable that the living conditions of neighbouring residents would be harmed by reason of noise, disturbance and vibration, particularly late at night and the early hours of the morning. Accordingly, a conflict arises with those provisions of LP policy DE10 requiring development not to give rise to unacceptable levels of pollution¹.

Other matters

17. I have taken account of all other matters raised in the representations including the objections made by neighbouring residents. I note the references to the National Planning Policy Framework, but given my conclusion I do not regard the proposal as an example of sustainable development.
18. No other matter raised outweighs those considerations which led me to my conclusions.

G Powys Jones

INSPECTOR

¹ A footnote to the policy provides that pollution, as meant in the policy, includes noise and vibration.