



Appeal Decision

Site visit made on 18 January 2023

by A Price BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 February 2023

Appeal Ref: APP/V1505/W/21/3289116

49 High Street, Wickford SS12 9AE

- 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 20, Class AB of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by M&D Properties Investment Ltd against the decision of Basildon Borough Council.
 - The application Ref 21/01315/PAND, dated 18 August 2021, was refused by notice dated 15 October 2021.
 - The development proposed is the single storey upward extension to facilitate the provision of seven residential units.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by M&D Properties Investment Ltd against Basildon Borough Council. This application is the subject of a separate decision.

Preliminary Matters and Main Issue

3. Under Article 3(1) and Schedule 2, Part 20, Class AB of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO), development is permitted for the construction of up to two additional storeys of new dwellinghouses immediately above the topmost storey on a terrace, subject to limitations and conditions, including the need for an application for prior approval. The requirement for prior approval is set out at sub-paragraph AB.2(1).
4. Whether the proposal would accord with prior approval matters in relation to sub-paragraph AB.2(1)(h) (the impacts of noise from any commercial premises on the intended occupiers of the new dwellinghouses) and AB.2(1)(f) (the provision of adequate natural light in all habitable rooms of the new dwellinghouses) are the matters in dispute between the Council and the appellant. That the other limitations and conditions would be fulfilled is not a matter of dispute.
5. The main issues are therefore whether a satisfactory standard of accommodation would be provided for future occupiers, with particular regard to (i) noise from any commercial premises and (ii) natural light.

Reasons

Impacts of noise from commercial premises

6. Proposed units 1 and 2 would each provide studio accommodation. Each of those units would be served by two west-facing windows. These would be located close to existing commercial cooling plant and would face onto a rear service yard for the ground floor and adjoining commercial properties.
7. A noise impact assessment was submitted in support of the proposed development, together with a follow up letter dated 2 December 2021. The assessment included an environmental noise survey, undertaken to determine the background noise levels at the site, together with sound levels generated by the surrounding premises. The assessment identified the potential impact of the town centre use, nearby street market, commercial deliveries and the commercial cooling plant.
8. Although the appellant sets out that cooling plant is operated only during the day, assumptions were made within the assessment for the potential use of the plant at night. I consider this to be a reasonable approach as the assessment covers a snapshot in time, and there is nothing before me that could prevent the plant from running later than it does, including during the night.
9. The evidence makes clear that without suitable mitigation measures, the future occupiers of Units 1 and 2 would be exposed to adverse noise impacts, particularly as a result of the running of cooling plant at night. The appellant sets out that mitigation measures would address issues in respect of noise. This would include sound insulation to walls, roof systems and windows. The use of such measures would likely be effective in minimising noise levels within the building, in accordance with British Standards BS8233:2014 and BS4142:2014 and World Health Organisation Guidelines for Community Noise (1999). However, this would rely on future occupiers needing to ensure windows on the north and east façade were closed.
10. Whilst there is no formal policy basis in the Framework that precludes the use of closed windows, whether or not with assisted ventilation, and irrespective of whether this has been implemented elsewhere, this arrangement would not provide a comfortable or reasonable living environment for future occupiers of Units 1 and 2. Occupiers would reasonably expect to be able to open their windows for fresh air and natural ventilation without being subjected to noise levels in excess of recommended limits. Any exceedance, however limited, would be inappropriate. The suggested layout of the units, with beds positioned further away from windows but within the same room, does not provide adequate justification, and I have no substantive evidence before me to demonstrate that the distance or position of the elevated dwellings relative to the plant would sufficiently reduce noise levels for future occupiers. Moreover, whilst a planning condition could be imposed to ensure a noise mitigation scheme was implemented, it cannot be ensured that windows would be closed as intended by future occupiers.
11. I accept the appellant's comments in respect of the timings of business deliveries, which would typically be within normal trading hours, and in any case would likely be limited in number and duration. I also acknowledge that this is a town centre location and that the impact of market trading during the day would be reasonably low. Future occupants would expect to experience a

degree of background noise associated with the adjacent High Street and town centre activity. Nevertheless, I conclude that the noise from plant at existing commercial premises would result in harm to the living conditions of future occupiers.

12. For the above reasons, I find that the proposed development would fail to provide adequate living conditions for future residents with respect to noise from commercial premises, contrary to the requirements of Class AB of the GPDO.

Provision of adequate natural light

13. The application was refused on the grounds that some proposed units, namely Units 4, 5 and 6, would be reliant on natural light from inset balconies which have open roofs, and that consequently future occupiers would likely need to rely on artificial light. Although not referenced within the officer report, the submitted plans also illustrate that Unit 3 would be served by a roof terrace window. I have considered the appeal on that basis.
14. A daylight and sunlight assessment was submitted in support of the proposed development. The assessment uses the Average Daylight Factor (ADF) test and has regard to the Building Research Establishment's (BRE) 'Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice' and BS 8206: Part 2: 'Lighting for Buildings - Code of Practice for Daylighting'. The assessment indicates that the proposed units would meet the criteria of the above guidance.
15. The evidence before me indicates that the assessment, using a 3D model, took into account layout, external obstructions and the position of windows within inset balconies and the roof terrace. Irrespective of the number of windows which would serve each unit or their precise position, I have no compelling evidence before me to suggest that the assessment is inaccurate or otherwise misleading.
16. Based on the evidence before me, I have no reason to doubt the conclusions of the submitted daylight assessment, that the ADF to all the habitable rooms of the proposed dwellings would be above the values recommended by the BRE and the relevant British Standard¹. I am satisfied that the assessment demonstrates that natural light levels to the proposed units would be provided and would be acceptable.
17. For the above reasons, I find that the proposal would provide adequate living conditions for future residents with respect to the provision of natural light in all habitable rooms of the new dwellinghouses, in accordance with the requirements of Class AB of the GPDO.

Other Matters

18. I concur with the appellant that the consideration of matters relating to outlook lie outside the limited scope of the GPDO assessment of this appeal. Accordingly, this is not a matter which alters my assessment of the main issues.

¹ BS 8206: Part 2: 'Lighting for Buildings - Code of Practice for Daylighting

19. That the appeal site is sustainably located and is not designated in heritage terms are not matters in dispute between the Council and appellant. As such, these matters do not alter my conclusion on the main issues.

Conclusion

20. While I have found that the requirements relating to the provision of adequate natural light are met, the requirements relating to noise are not. Accordingly, I conclude that the appeal should be dismissed.

A Price

INSPECTOR