



Appeal Decision

Site visit made on 3 May 2023

by David English BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 July 2023

Appeal Ref: APP/W4223/W/22/3311222

119 Broadbent Road, Oldham OL1 4HY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr J Brandford against the decision of Oldham Metropolitan Borough Council.
 - The application Ref FUL/348900/22, dated 12 April 2022, was approved on 28 June 2022 and planning permission was granted subject to conditions.
 - The development permitted is Change of use from C3 dwelling to C2 residential institution.
 - The condition in dispute is No 3 which states that: 'No development shall take place until a scheme to soundproof the party wall with 117 Broadbent Road has been submitted to and approved in writing by the Local Planning Authority and all such works that form the approved scheme shall be completed before the scheme is brought into use and shall be retained at all times thereafter.'
 - The reason given for the condition is: 'To protect the occupiers of both properties in accordance with Local Plan Policy 9.'
-

Decision

1. The appeal is allowed and the planning permission Ref FUL/348900/22 for Change of use from C3 dwelling to C2 residential institution at 119 Broadbent Road, Oldham OL1 4HY granted on 28 June 2022 by Oldham Metropolitan Borough Council, is varied by deleting condition No 3.

Background and Main Issue

2. Condition No 3 is a pre-commencement condition in the terms described in section 100ZA(8) of the Town and Country Planning Act 1990 (the Act). Section 100ZA(5) states that '*Planning permission for the development of the land may not be granted subject to a pre-commencement condition without the written agreement of the applicant to the terms of the condition.*' The appellant states that such written agreement from them was not sought by the Council, and the Council have not disputed that. As such the condition should not have been imposed. Accordingly, it is necessary to consider if, without that condition the development would be acceptable.
3. In light of the above, the main issue is the effect of the development on the living conditions of neighbouring occupiers at 117 Broadbent Road in respect of noise without condition No 3 in place.

Reasons

4. The appeal property is an end terraced three-storey dwelling in a quiet, well-established residential street towards the edge of the built-up area of Oldham.

It is attached to No 117, a dwelling which is identical in height to No 119 along the party wall that separates the two dwellings. It is this party wall to which the condition in dispute solely relates.

5. The permitted use for the building is to accommodate three residents for whom care would be provided by staff who would be present at all times. The Council's Application Report confirms that its Environmental Health advisors have no objections or concerns in relation to residential amenity subject to a condition requiring the installation of soundproofing being attached to any permission. However, no further explanation is provided regarding the need for soundproofing to the party wall.
6. The number of people who would occupy the property at any one time, including staff, would be no more than would normally be expected in a house of this size. Staff would arrive and leave generally during daylight hours, and the Council raised no concerns about comings and goings associated with the proposed use. I have seen little evidence that would substantiate the need for further soundproofing beyond that which currently exists between the two buildings.
7. Given the small scale of the use proposed, and the permanent presence of staff at the building, it is unlikely that noise from within the building would be significantly different to that which could be anticipated from the existing use as a dwellinghouse. Accordingly, in the absence of evidence to the contrary, and having regard to the requirements given at paragraph 56 of the National Planning Policy Framework concerning the imposition of conditions, it would be unnecessary and unreasonable to require the installation of soundproofing in this case.
8. I conclude that, from the evidence before me, notwithstanding that the Act does not allow for the imposition of condition No 3, the development without condition No 3 in place would not be harmful to the living conditions of neighbouring occupiers at 117 Broadbent Road in respect of noise. Accordingly, the development would comply with Policy 9 of the Oldham Local Development Framework Local Development Document Joint Core Strategy and Development Management Policies (November 2011) which requires that development does not cause significant harm to the amenity of existing and future neighbouring occupants through impacts on noise.

Other Matters

9. Having regard to the provisions of section 79(1) of the Act, it is appropriate in the context of this appeal for me to consider whether further changes are necessary to other conditions attached to the planning permission. I note that condition No 4 which concerns the provision of secure cycle parking is framed as a pre-commencement condition. However, the appellant raises no dispute with this condition and the evidence before me provides no information in respect of the requirements of the Act. Accordingly, I do not have cause to interfere with condition No 4 as drafted.

Conclusion

10. The development without condition No 3 in place would accord with the development plan as a whole. Therefore, for the reasons I have given, I

conclude that condition No 3 should not be imposed and the planning permission shall be varied as set out in the formal decision above.

David English

INSPECTOR