



Appeal Decision

Site visit made on 27 June 2023

by O Marigold BSc DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 July 2023

Appeal Ref: APP/J3720/W/23/3316016

30 Meer Street, Stratford-upon-Avon CV37 6QB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class G of the Town and Country Planning (General Permitted Development) Order 2015.
 - The appeal is made by Dr Yue Guo of Wen Brothers Property Investments Ltd against the decision of Stratford-on-Avon District Council.
 - The application Ref 22/01800/COUG, dated 31 May 2022, was refused by notice dated 21 October 2022.
 - The development proposed is change of use of upper floors to a two-bed flat.
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. The appeal application sought prior approval under Schedule 2, Part 3, Class G of the General Permitted Development Order (GPDO). This permits the change of use of a building from a use within GPDO Class E (commercial, business and service), to a mixed use for any purpose within that Class and up to 2 flats.
3. The proposal seeks to convert the upper floors of the property to form a two-bedroom flat. There is no dispute that in principle the proposal would fall within this category of permitted development, despite reference in the appellant's Noise Assessment (NA) to Schedule 2, Part 3, Class MA of the GPDO.
4. However, the change of use is only permitted by the GPDO under Schedule 2, Part 3, Class G where it complies with the conditions set out at section G1. One of these conditions is that the developer must apply to the local planning authority to consider whether its prior approval will be required in respect of several matters.
5. The only matter in dispute is whether, under G1(d)(iii), prior approval should be given as to the impacts of noise from commercial premises on the intended occupiers of the development. As such, the main issue is whether the proposal would provide adequate living conditions for future occupiers with regard to noise from commercial premises.

Reasons

6. The site is a three-storey building within the busy town centre of Stratford-upon-Avon. There are several commercial restaurants close to the site, including at China Kitchen (29 Meer Street) and Usha Cuisine (28 Meer Street). The NA found that the window that would serve the proposed Bedroom 2 would

- have elevated levels of sound associated with the kitchen extraction systems of these restaurants during the evening, until midnight.
7. The parties dispute whether the NA has been undertaken in full accordance with the relevant guidance of the British Standards. However, even on its own terms, the NA gives a likely indication of a significant adverse effect to occupiers, as assessed outside the rear second storey bedroom window of the proposal.
 8. The NA recommends the provision of uprated glazing, and that the rear window proposed to serve Bedroom 2 should remain closed whilst the kitchen extraction units are operating. It also suggests alternative ventilation such as air conditioning, which could improve cooling. These measures may well accord with the Building Regulations. With such measures in place, the NA advises that internal sound levels in the bedroom would be suitable for the preservation of residential amenity and sleep.
 9. However, the NA also recommends that the rear window should be capable of being opened, to provide choice for future occupiers. If opened, for example to provide fresh air, occupiers would be exposed to the high noise levels caused during the regular operation of the extraction units.
 10. Occupiers would have an alternative option of opening the front window to Bedroom 2, which faces onto Meer Street. However, I have little substantive evidence of the levels of noise within Bedroom 2 when the front window is open. Commercial noise, for example from customers entering or leaving the restaurants, may well discourage occupiers of the proposal from opening this window, particularly during summer evenings. As such, they would have little choice but to rely on opening the rear window for fresh air, with the resultant harmful noise effects.
 11. Moreover, little information is before me to demonstrate that other rooms within the proposal would have adequate living conditions. For example, the proposed study would be served by only one window. This faces to the rear and so may be as similarly affected as the rear Bedroom 2 window above it. To ventilate the study with fresh air, its occupiers would have little alternative but to open its rear window, again risking their exposure to adverse noise levels in the evenings.
 12. For these reasons, I am not satisfied that the proposal would provide adequate living conditions for future occupiers with regard to noise from commercial premises. The appellant has referred to other benefits of the proposal, such as Government support for the use of upper floors within town centres, and for the efficient use of land. Refusal of the proposal may result in the property remaining vacant.
 13. However, I can assess the proposal only against the criteria of the GPDO. This includes the National Planning Policy Framework, but only where relevant to noise, whereby significant adverse impacts on quality of life should be avoided. For the above reasons, I have found that prior approval should be withheld and that the appeal should be dismissed.

O Marigold

INSPECTOR