



Appeal Decision

Site visit made on 14 June 2022

by Samuel Watson BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th July 2023

Appeal Ref: APP/Y3425/W/21/3289776

Victoria Park House, Victoria Road, Stafford ST16 2AF

- 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, 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 Mr Vinesh Aggarwal of Enfield High Street (AGG12) Ltd against the decision of Stafford Borough Council.
 - The application Ref 21/34099/POR, dated 21 March 2021, was refused by notice dated 31 August 2021.
 - The development proposed is the conversion and change of use from offices (Class B1(a)) to dwelling houses (Class C3).
 - This decision supersedes that issued on 26 September 2022. That decision on the appeal was quashed by order of the High Court.
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Decision

1. The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class O of the GPDO for the conversion and change of use from offices (Class B1(a)) to dwelling houses (Class C3) at Victoria Park House, Victoria Road, Stafford ST16 2AF in accordance with the application 21/34099/POR made on 21 March 2021, and the details submitted with it, pursuant to Article 3(1) and Schedule 2, Part 3, Class O and subject to the following condition:
 - 1) The development must be completed within a period of 3 years starting with the prior approval date.

Applications for costs

2. An application for costs was made by Mr Vinesh Aggarwal of Enfield High Street (AGG12) Ltd against Stafford Borough Council. This application is the subject of a separate decision.

Preliminary Matters and Background

3. Under Article 3(1) and Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO), planning permission is granted for the change of use of a building and any land within its curtilage from offices (Class B1(a)) to dwellinghouses (Class C3) subject to limitations and conditions set out under Paragraphs O.1 and O.2.

4. It is accepted by both parties that the proposal would meet the requirements of Paragraph O.1 and that it would therefore be permitted development, subject to the conditions set out under Paragraph O.2(1)(a-e). These require that the developer apply to the local planning authority for a determination as to whether prior approval is required on; (a) transport and highways impacts of the development, (b) contamination risks on the site, (c) flooding risks on the site, (d) impacts of noise from commercial premises on the intended occupiers of the development, and (e) the provisions of adequate light in all habitable rooms of the dwellinghouses.
5. The provisions of Schedule 2, Part 3, Paragraph W of the GPDO require that regard be had to any representations made and to the National Planning Policy Framework (the Framework) so far as it is relevant to the subject matter of the prior approval, as if the application were a planning application. I have therefore had regard to these in my considerations below.
6. Amended plans were submitted providing additional information as required by the GPDO. I find that no one would be prejudiced by taking account of these plans and so I have considered them under this appeal. The appellant has also submitted a Unilateral Undertaking as part of the appeal. This is dealt with later in the decision.

Main Issues

7. The main issues are:

- Whether the proposal, by way of any impacts of noise from commercial premises on the intended occupiers of the development, would provide suitable living conditions; and,
- Whether the proposal would provide suitable mitigation against any impacts on the Cannock Chase Special Area of Conservation (the SAC).

Reasons

Living Conditions

8. The appeal site is a relatively square plot on Victoria Road that contains a five-storey office block with car parks to the front and rear. The site is bounded to the rear and one side by a Mercedes-Benz dealership which provides sales and servicing, to the other side are an office and billiards and snooker club. Nearby are also some residential properties, Stafford railway station and a park.
9. My site visit was carried out sometime after the morning rush hour, I nevertheless noted that the area was still busy with traffic and pedestrians, I also noted people using the nearby park. Although my visit can provide only a snap-shot in time, given the site's location close to the railway station and the centre of Stafford, this area is likely to be typically busy throughout the day. Trains arriving, waiting or leaving the station could also be heard at intervals. The car dealership appeared to be open at the time of my visit, however, I could not be certain that any vehicle servicing was being carried out. Therefore, it has not been determinative in my considerations that I did not hear any noise from the dealership at the time of my visit.

10. The GPDO sets out, for the purposes of Class O, what is meant by the term 'commercial premises', namely any premises normally used for the purpose of any commercial or industrial undertaking, excluding those licensed under the Licensing Act 2003 or any other place of public entertainment.
11. The railway station houses a mixture of commercial activities from the selling of tickets to a café. However, on a plain reading of the description above, and given the evidence before me¹, the station, in so far as it relates to the movement of trains, would not comprise a commercial premises. They instead relate to transport infrastructure and their noise, much like that from the road network, cannot be considered under Paragraph O.2(1)(e).
12. The appellant has submitted two noise reports. The initial assessment, carried out by Dr Sagoo and followed by an addendum by Nova Acoustics, found that noise observed at the site exceeded the levels set out under BS8233:2014 for living rooms, dining rooms and bedrooms during the day and night-time periods. Very briefly, the noise levels recorded on the Victoria Road elevation were up to an average of 67dBA LAeq during the day, and up to 59.3dBA LAeq at night. For the rear elevation the average noise levels were up to 10dBA lower during the day and night-time measurements. This assessment could not, however, delineate between the different noise sources in the surrounding area.
13. The second, full, assessment was made by RP Acoustics who carried out further noise monitoring alongside commenting on the previous two submissions. This again found that noise to the rear of the site was lower than at the front and determined that the dominant noise source was transportation. Commercial noise was considered to not be significant, estimated at around 40dB and that noise stemming from the dealership would meet noise level requirements when inside the proposed flats.
14. I understand from the information before me that whilst the dealership carries out vehicle services on site, any significant mechanical works are undertaken offsite. The noise assessments found that only the car wash and dryer were audible from the rear of the appeal site, and this was only intermittently whilst trains were not at the station. Given this, the lack of evidence to the contrary, and the presence of insulation at the dealership building, I have no reason to find otherwise than the 40dB raised above. This level would be significantly lower than both that recorded at the front and rear of the appeal site.
15. Moreover, the dealership's hours do not extend overnight when general noise levels are lower and future occupiers are likely to be sleeping. Overall, I find that the contribution the Mercedes-Benz dealership and service garage would make to the overall would not be unacceptable. I also find that the noises would not be audible or disruptive from within the proposed dwellings and that it would, consequently, not be necessary for additional soundproofing to be sought.
16. Consequently, there would be no unacceptable impact from noise related to commercial properties to the detriment of the living conditions of future occupiers. The proposal would therefore comply with the requirement set out under O.2(1)(e). In reaching this decision I have been mindful of the Framework, including its aims regarding living conditions set out under

¹ Including appeals referenced APP/Y0435/W/19/3233359, APP/N5090/W/18/3205752, APP/N5090/W/19/3243616

Chapter 12 and in particular Paragraph 130 which seeks for developments to provide a high standard of amenity for future users.

The SAC

17. The appeal site is located within the 15 kilometre zone of influence for the SAC. As the scheme is for residential development it has the potential to significantly adversely impact on the integrity of the SAC through increases in residents near, and human activity within, the SAC. At the time of the application, officers had concluded that the matter could be addressed through mitigation in line with the Strategic Access Management and Monitoring Measures (SAMMM), which provides a framework by which applicants can contribute towards the delivery of monitoring and mitigation. The Council was satisfied that the matter could be dealt with by way of a planning obligation and this approach was supported by Natural England.
18. Under Regulation 63 of the Conservation of Habitats and Species Regulations (as amended) as competent authority, I am required to undertake an Appropriate Assessment on the basis of its likely significant effects on the SAC as a European Site. The mitigation proposed to address these effects are the contribution towards the SAMMM as considered by the Council and Natural England.
19. A signed and dated Unilateral Undertaking (UU) was submitted by the appellant during the appeal process which provides a mechanism for the securing of this contribution in line with the Council's SAMMM. However, I note a number of issues with the UU, not least, that under Schedule 1, Paragraph 5 it refers only to 'the development'. In this way it does not clearly define itself as referring to either the first or second developments as is clearly referenced elsewhere in the document.
20. However, reading the paragraph in the context of Schedule 1 as a whole, as well as in the context of the wider UU, it is sufficiently clear that it is the 'first development' that is being referred to. In considering the UU I have been mindful of the High Court Judgement relating to the quashed decision referred to above and consequently, I have reached a different conclusion to that reached by the Inspector dealing with the quashed appeal decision.
21. I therefore find that the UU would be necessary to make the development acceptable in planning terms, by mitigating the likely significant effect on the SAC. The UU would also be directly related to, and commensurate with the scale of, the development.
22. Having regard to the submission by Natural England and relevant planning policy, including the Council's SAMMM, I consider that the proposed measures would adequately mitigate the effects of the appeal scheme, either alone or in combination with other plans and projects, so that there would be no adverse effect upon the integrity of the SAC. Moreover, the mitigation would be secured and managed by a UU. Accordingly, the proposed development would meet the objectives of the SAMMM and Policy N4 of the Plan for Stafford Borough 2011-2031 which requires that developments protect the natural environment, including designated sites.

Other Matters

23. The Council made reference to an appeal decision² they considered to be relevant to this appeal. However, although the Council have described the Inspector's findings, I have not been provided with this decision or the context behind it. Therefore, I cannot be certain that the decision is relevant to the appeal before me. Consequently, it has not been determinative in my considerations.

Conclusion

24. For the reasons given above, I conclude that the appeal should be allowed and prior approval should be granted.

Samuel Watson

INSPECTOR

² Reference: APP/Z0116/W/18/3193990