



Appeal Decision

Site visit made on 24 July 2023

by J E Jolly BA (Hons) MA MSc MCIH MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 July 2023

Appeal Ref: APP/Q3820/W/22/3301159

90-92 High Street, West Green, Crawley RH10 1BP

- 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 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GDPO).
 - The appeal is made by Daejan Commercial Properties Limited against the decision of Crawley Borough Council.
 - The application Ref CR/2021/0563/PA3, dated 27 July 2021, was refused by notice dated 10 March 2022.
 - The development proposed is for a change of use from offices (B1a) to 15 No residential flats (C3).
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Daejan Commercial Properties against Crawley Borough Council. This application will be the subject of a separate Decision.

Procedural Matters

3. The Government published a revised National Planning Policy Framework (the Framework) in July 2021. All references to the Framework in this decision relate to the updated document.
4. The application sought prior approval under Part O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) for the change of use from offices (B1a) to 15 No residential flats (C3). Although the proposed change of use would now be subject to permitted development rights relating to Class E, the application was submitted before these rights came into force on 31 July 2021. Therefore, I have proceeded in accordance with, and reference to, the previous use classes.

Main Issues and Background

5. The provisions of Schedule 2, Part 3, Class O of the GPDO require the Council to assess the proposed development based on a number of different matters, as set out under paragraph O.2 of the GPDO. The Council's reason for refusal confirms that the sole matter in contention when they determined the application was that the impact of noise from nearby commercial entertainment premises on future occupiers and the night-time economy would be unacceptable. I find no reason to disagree.

6. Therefore, the main issue in this appeal is:

- the impact of noise from nearby commercial entertainment premises on the living conditions of future occupiers and the night-time economy.

Reasons

7. The appeal site is located at the northern end of High Street, Crawley at the junction with Orchard Street. The High Street includes a pedestrianised zone with seating and is typified by a range of public-houses, bars, shops, restaurants and fast-food outlets. The appeal property is a redbrick building that faces onto the Anjelique Bar, Mehfil Lounge and a restaurant as well as two fast-food outlets across the highway and a small grassed area. There is also a taxi office in close proximity to the appeal building.
8. The proposed development for residential dwellings on the first and second floors of the former offices/bank would be close to a large range of entertainment premises that typically generate noise and music associated with social activity. In this location some of the venues are open to the early hours of the morning across most of the week. For example, I noticed at my site visit that, other than on Monday, that the Anjelique Bar is open until 2 or 3am.
9. The site visit took place in the morning when some of the venues were closed. As such, the ambient sounds, including the traffic noise were consistent with that of a typical high street during the day. Nonetheless, I am mindful of the two professional noise assessments/acoustic reports submitted by the appellant, particularly the assessment that was carried out after the covid pandemic restrictions were lifted. The appellant concedes that the second noise assessment, dated 18th January 2022, found that current noise levels within the building would exceed guidelines set out in BS8233:2014¹. Indeed, the recorded internal sound pressures, which took place over two weeks during the Christmas and New Year period, were not graded as 'good' or 'reasonable' when assessed across a 24-hour period. To my mind, while the single glazing of the appeal building might have been sufficient for the purposes of the former office use during the day when noise levels are lower, it would be less than ideal for external noise reduction during the opening hours of the entertainment venues, particularly at certain times of the evening, night and early morning when the venues are most likely to be heavily frequented. Indeed, in mitigation, and in the spirit of the 'agent of change' principle set out in Paragraph 187 of the Framework, the appellant has proposed, by means of a future planning application, that the windows of the building could be upgraded. In addition, an alternative ventilation system would be installed. The appellant contends that this would negate the need for future occupiers to open the windows when external noise levels are raised, although the option to do so would remain.
10. I accept that it is a matter of personal choice to live in the building, and whether its windows are to be opened or not falls to the individual. Moreover, that the appeal building is located on the High Street where some degree of activity is to be expected.

¹ Guidance on sound insulation and noise reduction for buildings.

11. However, even if mechanical ventilation systems have been accepted by the Council in order to reduce noise impacts for residential schemes elsewhere in the Borough², the fact remains that at warmer times of the year it is likely to be more desirable and indeed reasonable for the future occupants to have their windows open without being subject to unacceptable noise levels generated by the entertainment premises at a time of day when most people choose to relax or sleep. Indeed, while the scheme would meet nationally described space standards, as the apartments have no outside or communal space, from time-to-time fresh air is likely to be sought by the future occupants for reasons of health and well-being.
12. Moreover, even though any structural vibration is likely to be limited due to the separation of the property from the music venues on the other side of the road, the noise generated by the numerous entertainment venues, in combination with people gathering in the pedestrian zone for late night drinking and socialising, as well as the comings and goings associated with the taxi office, is likely to draw complaints from the future occupiers of the dwellings as a consequence of their inability to fully relax or achieve restful sleep.
13. Any nuisance proceedings that might follow would have the potential to harm the future viability of Crawley's night-time economy which is concentrated in this area. Indeed, I am mindful again of the advice contained in Paragraph 187 of the Framework, which says that, planning policies and decisions should ensure that new development can be integrated effectively with existing businesses, and that existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established.
14. Whilst this prior approval appeal has not been determined on the basis of Section 38(6) of the Planning and Compulsory Purchase Act 2004, Policy ENV 11 of the Crawley Local Plan, 2015 (CLP) is relevant to the planning judgement in this case which says, amongst other things, that people's quality of life will be protected from unacceptable noise impacts by managing the relationship between noise sensitive development and noise sources.
15. I conclude therefore, that the noise from the nearby commercial entertainment premises would result in an oppressive and unsatisfactory environment that would cause significant harm to the living conditions of the future occupiers of the proposed development and prejudice the future operation of the nearby commercial premises.

Other Matters

16. The appellant has brought to my attention a number of schemes in support of the case³. I have limited details of those schemes before me, including their precise location, most of which are found in different towns and cities altogether. Indeed, from the evidence before me, the 'Three Bridges' application relates to a scheme that is in close proximity to a railway line and is set away from the town centre, the 'Bristol' appeal considered the noise impact of a sports stadium and a lifting machinery and plant hire business rather than entertainment venues, and the 'Milton Keynes' proposal was located next to predominantly office buildings.

² APP/3237681

³ CR/2020/0037/FUL, APP/3220741, APP/3252160, and APP/3253139

17. Furthermore, while there might be some similarities between the proposal and the 'Luton' appeal for a building's change of use from office to residential dwellings, which included consideration of a health centre, gymnasium, supermarket, takeaway, public-house and restaurant, I cannot be certain if any of those schemes were subject to the same level of night-time activity as the proposal before me. Therefore, I have considered the proposal before me on its own planning merits.
18. I acknowledge that the site is located in the Sussex North Water Supply Zone and that the proposal cannot, with any certainty, have no adverse effect on the integrity of the Arun Valley Special Conservation Area, Arun Valley Special Protection Area and the Arun Valley Ramsar Site. As such, a water neutrality strategy would normally be required for consideration by myself as a competent authority. However, as planning permission is to be refused, this matter need not be considered any further in this case.
19. The appellant has indicated that the Council cannot meet their housing need over the plan period of the CLP. However, while I acknowledge that the proposal for 15 new dwellings would result in a contribution to the Council's housing supply, to which I attribute some limited weight, it does not outweigh the harm I have found above.

Conclusion

20. For the reasons given above, I conclude that the appeal should be dismissed.

J E JOLLY

INSPECTOR