



Appeal Decision

Site visit made on 13 September 2023

by Rachel Hall BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th November 2023

Appeal Ref: APP/P4605/W/23/3316591

63 Hunters Vale, Birmingham B19 2XH

- 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 MA of the
 - Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Mrs S Butt against the decision of Birmingham City Council.
 - The application Ref 2022/07950/PA, dated 21 October 2022, was refused by notice dated 8 December 2022.
 - The development proposed is prior approval for change of use from commercial, business & service (Use Class E) to 4 flats (Use Class C3).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development above is taken from the Council's decision notice rather than the original planning application form which did not include a description but instead referred to supporting information.

Background and Main Issue

3. Schedule 2, Part 3, Paragraph W of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) states that the local planning authority may refuse a prior approval application where the proposed development does not comply with, or the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with, any conditions, limitations or restrictions specified as being applicable to the development in question. It was on the above basis that the Council refused to grant the prior approval.
4. Class MA of the GPDO permits a change of use of a building and any land within its curtilage from a use falling within Class E (commercial, business and service) to a use falling within Class C3 (dwellinghouses). Paragraph MA.2 sets out that development under Class MA is permitted subject to an application to the local planning authority for a determination as to whether prior approval is required in relation to the matters set out in paragraphs MA.2(2). This includes matter MA.2.d) which is the impacts of noise from commercial premises on the intended occupiers of the development. The Council considers that the submitted noise assessment is inadequate to determine whether the noise impacts would be acceptable.
5. Accordingly, the main issue is whether or not it has been demonstrated that the proposal would accord with the conditions of Schedule 2, Part 3, Class MA

of the GPDO, with regard to the impacts of noise from commercial premises on the future occupants of the proposal.

Reasons

6. The appeal is accompanied by an environmental noise assessment by RandTech Consulting Ltd (21 October 2022) (the assessment). This is based on a 24 hour survey that measured noise outside a first floor window of the appeal building, overlooking Hunters Vale (the Road). The assessment also includes two additional noise measurements taken on a day subsequent to the 24 hour survey. The first (51.1dB LAeq 30min) was recorded the site boundary with the adjacent warehouse. The assessment states that no significant activity was observed in the loading bay area and concluded that that site would not contribute noise of significance to the proposal.
7. The second (52.4dB LAeq 30min) was recorded in front of the open roller shutter at the car repair and MOT test centre diagonally opposite the appeal site. The assessment finds that the approximately 25m separation distance of that site from the appeal building would reduce noise impacting the appeal scheme by approximately 28dB. As such it finds no noise contribution of significance from the MOT test centre to the appeal scheme. No robust evidence is before me to indicate that a noise reduction of that magnitude is unrealistic.
8. Nevertheless, in respect of both of these nearby operations, insufficient consideration is given as to the types of activity that are currently undertaken at those sites, the hours of working and variations in intensity of any associated noise. Moreover, there is no clear evidence assessing how the use of these commercial premises might vary within the limits of their planning permissions, how the appeal development might correspondingly be affected and whether this could be suitably mitigated.
9. Without consideration of such matters, I cannot be sufficiently certain that future occupants of the proposal would be provided with acceptable living conditions, without undue disturbance from noise associated with those uses. Furthermore, in the absence of more detailed evidence in that regard, I am concerned that the proposed occupation of the appeal scheme could lead to pressure for restrictions to be placed on users of the existing nearby commercial premises, such that unreasonable burdens might be placed on those uses.
10. Although there are existing residential uses in the area, the appeal scheme would be particularly close to the loading bay of the adjacent warehouse, as well as being diagonally opposite the car repair and MOT test centre. Therefore future occupants of the proposal would likely be more susceptible to noise and disturbance from those uses, than existing residents. In any event, the existence of other houses in the locality where noise levels experienced by existing residents may or may not be acceptable, does not justify allowing a scheme where it appears that noise levels could cause unacceptable disturbance to future occupants of the appeal scheme.
11. It may be possible to mitigate traffic noise from the Hockley Flyover through suitable double glazing. However, on the evidence before me, there would be an unacceptable risk that the proposal would not provide satisfactory living conditions for its future occupants due to more intrusive noise from the adjacent warehouse and nearby MOT test centre. Without further detail on the

nature and extent of likely noise from these commercial uses, I cannot judge whether or not a condition would be appropriate.

12. Therefore, it has not been demonstrated that the proposal would accord with the conditions of Schedule 2, Part 3, Class MA of the GPDO, with regard to the impacts of noise from commercial premises on the future occupants of the proposal. Consequently, the proposal would conflict with Policy DM6 of the Birmingham Development Plan (January 2017), which amongst other matters seeks to ensure proposals for residential development reduce or mitigate any adverse effects from existing noise sources.
13. The proposal would also be contrary to National Planning Policy Framework (Framework) paragraph 174(e) which seeks to ensure that new development is not adversely affected by unacceptable levels of noise pollution. It would also be contrary to paragraph 187 of the Framework, which seeks to ensure that new development can be integrated effectively with existing businesses. It advises that existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. In this regard the Planning Practice Guidance (PPG) advises that new development needs to take into account not only the current activities that may cause a nuisance, but also those activities that businesses or other facilities are permitted to carry out, even if they are not occurring at the time of the application being made¹.
14. For the foregoing reasons therefore, the proposed residential use would be reasonably likely to give rise to complaints regarding noise, thereby placing unreasonable burdens on these commercial uses. In these respects the proposed development would be contrary to the Framework and the PPG. I also find conflict with the Council's Planning Consultation Guidance Note: Noise and Vibration (March 2020) which advises that a noise assessment in accordance with BS4142 should be undertaken to consider the impact of existing industrial and commercial noise on proposals for residential development.

Other Matters

15. Information on the Council's justification for permitting the MOT test centre is not before me and does not alter my reasoning here. Whether or not the effects of commercial and industrial noise are harmful to users of the nearby church is also not a matter for consideration here. Moreover, the church is more remote from the warehouse facility on Hunters Vale than the appeal site. Also, church users are less likely to be present overnight, whereas future occupants of the proposal would be particularly sensitive to night time noise disturbance from any 24 hour warehouse operations. Although the Council has not carried out their own noise monitoring, it is for the appellant to demonstrate that the proposal would be provided with acceptable living conditions with respect to noise.

Conclusion

16. Therefore, for the reasons given above the appeal is dismissed.

Rachel Hall INSPECTOR

¹ PPG Paragraph: 009 Reference ID: 30-009-20190722