



Appeal Decision

Site visit made on 9 January 2024

by S M Holden BSc (Hons) MSc CEng MICE CTPP FCIHT MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 January 2024

Appeal Ref: APP/Z3825/W/22/3312556

10 Middle Street, Horsham, West Sussex RH12 1NW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Azem Nurcja against the decision of Horsham District Council.
- The application Ref DC/22/1182, dated 22 June 2022, was refused by notice dated 18 August 2022.
- The development proposed is a change of use at First and Second Floor level from A1 to C3 to provide a 3 bedroom flat.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application sought planning permission and listed building consent for the development and works set out above. However, the appeal before me only relates to the refusal of planning permission as no appeal against the Council's decision to refuse listed building consent has been lodged.
3. The plans submitted with the application show that the only changes to the room layouts would be to enable the insertion of a WC on the first floor and en-suite showers on the second floor. The effect of these alterations on the listed building is not development that requires planning permission and is therefore not for me to consider in the context of this appeal. On my visit I saw that these works had been carried out, but no change of use had taken place. Three separate commercial activities were evident on the upper floors of the building.

Main Issues

4. The main issues are:
 - a) the effect of the conversion on the nature conservation interests of the Arun Valley Special Area of Conservation (SAC), Special Protection Area (SPA) and Ramsar Sites having regard to water abstraction;
 - b) whether the proposed conversion would provide acceptable living conditions for future occupants having regard to noise.

Reasons

Water neutrality

5. The appeal site lies within the Sussex North Water Supply Zone as defined by Natural England (NE). This area includes supplies from groundwater abstraction which is already adversely affecting the Arun Valley Special Area of

Conservation (SAC), Special Protection Area (SPA) and Ramsar Site. These areas have been designated as Habitats sites for their rare plant, invertebrate and bird assemblages, including the Bewick swan and many waterfowl. The Arun Valley is one of the remaining strongholds of the Little Whirlpool Ramshorn Snail. Unsustainable abstraction from rivers and groundwater leads to lower flows and reduced water levels which threatens ecological health. The maintenance and restoration of the habitats is therefore vital to support the diversity of the rich flora and fauna of the protected sites.

6. It is common ground that the change of use would result in an increased demand for water from ground water abstraction in the Sussex North Supply Zone. In the absence of mitigation measures there would be a likely significant effect on the protected areas. The Conservation of Species and Habitats Regulations 2017 (as amended) (the Habitats Regulations) therefore requires me to undertake an Appropriate Assessment taking account of any proposed mitigation measures to consider whether the proposal would adversely affect the integrity of the protected sites.
7. The appellant submitted a Water Neutrality Statement (WNS). This provided a list of potential mitigation measures to reduce the demand for water within the flat and a water butt to make use of recycled water. However, the WNS also indicated that off-site offsetting measures would be required. NE were consulted and concluded that based on the information provided it was not possible to ascertain no adverse effect on the integrity of the Habitats Sites.
8. Even if the on-site measures could be secured by means of planning conditions, the off-site offsetting measures would need to be identified and secured by means of a planning obligation. This is necessary to be certain that the mitigation would be in place before the development commenced. No such obligation was provided with the appeal. I have considered the possibility of imposing a negatively worded Grampian-style condition which would require a planning obligation to be entered into before the development could commence. However, the Planning Practice Guidance advises that such an approach is only appropriate in exceptional circumstances, such as complex development schemes. It would therefore not be appropriate in this case.
9. For these reasons I conclude that there cannot be certainty that the proposal would not contribute further to the existing adverse effect on the integrity of the Arun Valley SAC, SPA and Ramsar sites. The proposal would conflict with Regulation 63(5) of the Habitats Regulations and Policy 31 of the HDPF.

Noise

10. Planning permission for extraction equipment to serve the café on the ground floor was approved under DC/21/1890 in May 2022. However, approval of this equipment was based on the premise that the upper floors would be in commercial, not residential, use.
11. The ducting for the extraction equipment has been installed and passes through the rooms shown as WC and en-suite on the first and second floors of the proposed flat. In both these small rooms the ventilation shaft has been boxed in and tiled. The shaft within the WC is adjacent to the proposed utility room on the first floor which would not be a habitable room for the purposes of the assessment. By contrast on the second floor the shaft is within the en-suite shower and would be adjacent to one of the bedrooms.

12. The appellant submitted a revised noise assessment with the appeal specifically to address the effects of the change of use from commercial to residential. This demonstrated that the average daytime noise level within the bedroom is less than 35dB $L_{Aeq, 16hr}$. This would be in line with internal noise requirements of BS8233:2014 (Sound Insulation and Noise Reduction for Buildings – Code of Practice) and the Professional Practice Guidance on Planning and Noise. Notwithstanding the ongoing concerns raised by the Council’s environmental health officer, as these observations were based on the proposed layout for the dwelling, I see no reason to reject them.
13. In reaching my view I am also mindful that the building is located in the town centre where there is significant activity and external noise from traffic and people within the area. As the café only operates during the daytime, any internal noise associated with the ventilation equipment would be heard alongside the bustle of this central location. As it would not be used at night, it would not cause sleep disturbance.
14. I therefore conclude that the proposed change of use would not result in unsatisfactory living conditions for future occupants of the proposed flat. There would be no conflict with Policies 24 or 33 of the Horsham District Planning Framework which, amongst other things, seeks to protect the living conditions of the district’s residents and minimise unacceptable exposure to noise.

Conclusion

15. Although I have found that the conversion would not result in unacceptable noise for future occupants, the proposal would adversely affect the Arun Valley SAC, SPA and Ramsar site. The Habitats Regulations state that I may permit a plan or project only after having ruled out such effects. This leaves me with no option other than to dismiss the appeal.

Sheila Holden

INSPECTOR