



Appeal Decision

Site visit made on 19 December 2023

by R Gee BA (Hons) Dip TP PGCert UD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 January 2024

Appeal Ref: APP/J1915/W/23/3324315

Bircherley Green Shopping Centre, Hertford SG14 1BN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
- The appeal is made by Mr A Ward against the decision of East Hertfordshire District Council.
- The application Ref X/22/0515/CND, dated 1 December 2022, sought approval of details pursuant to condition No 19 of a planning permission Ref 3/22/0712/VAR, granted on 19 August 2022.
- The application was refused by notice dated 5 May 2023.
- The development proposed is discharge of conditions 19 (A3/A4 - Sound Insulation) 41 (Lighting - Block A and B) 49 (Health Facility) 52(F) (Proposed and existing functional services above and below ground) 65 (Odour) of planning approval 3/22/0712/VAR.

The details for which approval is sought are:

Before any of the A3/ A4 uses have been brought into use, a scheme of sound attenuation works shall be submitted to and approved in writing by the Local Planning Authority. Once these details are agreed they shall be installed and retained in the approved form thereafter. The scheme of works shall be capable of restricting noise breakout from the A4 use to the flat above to levels complying with the following:

- o Bedrooms. Noise Rating Curve NR20 (2300 to 0700 hrs)
- o Living Rooms. Noise Rating Curve NR25 (0700 to 2300 hrs)

The Noise Rating Curve shall be measured as a 15-minute linear Leq at the octave band centre frequencies 31.5 Hz to 8 kHz.

- The reason given for the condition is:
In order to ensure an adequate level of amenity for nearby residents in accordance with policy EQ2 of the East Herts District Plan 2018.
-

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr A Ward against East Hertfordshire District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. I have taken the address from the Council's Decision Notice as this more accurately describes the location.

4. Since the determination of this application, the Government published a revised National Planning Policy Framework (the Framework) on 20 December 2023. Those parts of the Framework most relevant to this appeal have not been amended. As a result, I consider that there is no requirement for me to seek further submissions on the revised Framework, and I am satisfied that no party's interests have been prejudiced by taking this approach.
5. At the time of my visit, I observed the development to be at an advanced stage of construction.

Main Issue

6. The main issue is whether the details submitted to discharge Condition 19 would protect the living conditions of nearby residents in relation to noise and disturbance.

Reasons

7. The appeal site comprises a mixed-use development including commercial units at ground floor level and residential flats on the upper floors.
8. Condition 19 requires that a scheme of sound attenuation works capable of restricting noise breakout from the A4 use to the residential flat above be submitted to and approved in writing by the Local Planning Authority.
9. The appellant acknowledges that in order to provide a high standard of amenity for the future occupiers of the flats it is necessary for noise mitigation measures to be provided. The Cass Allen report ref: RP03-20631-R0 demonstrates that, assuming that noise generated by A3 and A4 uses are approximately 85dBA and the proposed flooring system is installed, residents within the development will be sufficiently protected. The report goes on to state that *"Should noisier commercial uses ultimately want to use the space (e.g. a busy bar with loud music), they will be required to increase the sound insulation performance of the floor as part of the fit out of the commercial units. This is achievable by adding acoustic ceilings to the commercial units..."* and *"...The inclusion of these treatments, if required, will be controlled via the imposition of a suitable acoustics-related clause on the lease agreements for the commercial units. The following clause (or similar approved) will be imposed..."*.
10. Leaving any enhanced sound mitigation to agreement between the landlord and a future occupier would result in the Council not having the ability to approve the specification of the enhanced measures. Furthermore, if the requirement for the enhanced measures were part of the lease agreement between the landlord and tenant it would be unenforceable by the Council.
11. A scheme has been proposed which satisfies part of the planning condition in that it would protect future occupants against a noise level of 85dBA arising from the commercial units. However, higher noise levels may be generated within the commercial units depending on the nature of the occupier. The further measures set out in the Cass Allen report are not sufficient to allow the discharge of the condition. The details submitted would be unenforceable and so cannot meet the tests for conditions in the Framework.
12. I have carefully considered the representations of the appellant. Mindful of relevant advice in the Framework and the expectation of a good standard of

amenity for future occupiers of the flat, I am not satisfied that the requirements of condition 19 have been met or that the living conditions of the future occupiers of the residential accommodation would be adequately protected.

13. For the above reasons, I am not satisfied that the details submitted to discharge Condition 19 would protect the living conditions of nearby residents in relation to noise and disturbance. I therefore find conflict with Policy EQ2 of the East Herts District Plan 2018. Amongst other matters, this states that development should be designed and operated in a way that minimises the direct and cumulative impact of noise on the surrounding environment with particular consideration given to the proximity of noise sensitive uses, and in particular, the potential impact of development on human health. In reaching this conclusion I have also had regard to the Framework which seeks to ensure a good standard of amenity for all future occupants of buildings and that new development is integrated effectively with businesses.

Other Matters

14. The appeal relates to the discharge of a planning condition. Whether or not the condition is unreasonable is not before me.

Conclusion

15. For the reasons stated above, the appeal is dismissed.

R Gee

INSPECTOR