



Appeal Decision

Site visit made on 19 December 2023

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 January 2024

Appeal Ref: APP/C1055/W/23/3319867

24a Great Northern Court, Great Northern Road, Derby DE1 1LR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required by Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).
 - The appeal is made by Mrs H Ward -EMS Limited against the decision of Derby City Council.
 - The application Ref 23/00123/PNRIA, dated 28 January 2023, was refused by notice dated 25 March 2023.
 - The development proposed is change of use from commercial, business and service (Use Class E) to 6 dwelling houses.
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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 MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for change of use from offices (Use Class E) to 6 apartments (Use Class C3) at 24a Great Northern Court, Great Northern Road, Derby DE1 1LR in accordance with the application Ref 23/00123/PNRIA, dated 28 January 2023, and the details submitted with it subject to the conditions set out in the attached schedule.

Preliminary Matters, Background and Main Issue

2. 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). The main parties agree that the development would be permitted by Class MA having regard to the criteria set out at Paragraph MA.1. From what I have seen, I find no reason to conclude otherwise.
3. 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(2)(d) which relates to the impacts of noise from commercial premises on the intended occupiers of the development. The Council's reason for refusal relates to issues considered under 'noise impacts' within its officer report and I have defined the main issue on this basis.
4. Part 3, Class W of the GPDO sets out the procedure for prior approval applications under Part 3. Paragraph W.10(b) requires the decision-maker to 'have regard to the National Planning Policy Framework ... so far as relevant to

the subject of the prior approval, as if the application were a planning application'. Following submission of the appeal, the revised National Planning Policy Framework (the Framework) was published on 19 December 2023 and updated on 20 December 2023. The relevant parts of the Framework, including the requirement for developments to avoid noise giving rise to significant adverse impacts on health and the quality of life, have not substantively changed from the previous version. Consequently, this update to national policy does not fundamentally alter the main parties' cases or prejudice their position at appeal, and it is not necessary to seek further comments.

5. The decision notice includes references to policies of the development plan for the area. The principle of development is established through the grant of permission by the GPDO, and I am required to assess the proposal as a prior approval application as set out within the parameters of the GPDO. Regard can be given to development plan policies insofar as they are material considerations, however they are not in themselves determinative.
6. Given the background to the appeal and the preliminary matters above, the main issue is:
 - Whether the proposed development would be granted planning permission by Article 3, Schedule 2, Part 3, Class MA of the GDPO with regard to the impacts of noise from existing commercial premises on the intended occupiers of the development.

Reasons

7. The appeal building is located in an area with a mix of uses and is set well back from the site boundary with Great Northern Road. There are existing commercial premises in close proximity to the site including a motor repair garage and a gymnasium both of which front Great Northern Road. Part of the appeal building also backs on to Carrington Court Industrial Park which includes uses such as a children's soft play unit. There are also several residential properties close to the site for example at No 24 Great Northern Court, Alexandra Mills and Rowleys Mill.
8. The appellant's 'Assessment of Noise from External Sources' (July 2022) (noise assessment) covers the period from Tuesday 5 July 2022 am through to Thursday 7 July 2022 pm. Therefore, it encompasses times both during the day and night during the working week when commercial activity in the area would likely be prevalent.
9. The noise assessment suggests that noise levels at the site were generally low with road traffic being the main noise source. No significant noise was observed from nearby commercial premises. The noise assessment also takes into account potential noise sources in terms of HGV traffic at Carrington Court Industrial Park and the external condenser unit on the south wall of a nearby commercial unit occupied by 'DS Screen Printing' such that a worst-case scenario was modelled.
10. Recommendations are made within the noise assessment for the building envelope design in order to control noise intrusion. With the measures in place, the noise assessment predicts that noise intrusion will be controlled to meet the guidance of BS8233 for internal noise levels. The Council has not provided any detailed contrary evidence to suggest that the appellant's noise

assessment cannot be relied upon or that the surrounding noise environment has materially changed since it was undertaken.

11. Given the specific conclusions of the noise assessment set out above, I am satisfied that noise levels within the building can be appropriately controlled by the Council's suggested condition that a scheme of sound insulation be submitted.
12. I conclude, the impacts of noise from commercial premises on the intended occupiers of the development could be made acceptable subject to suitable mitigation measures being incorporated into the building fabric. For the same reasons, the proposal would also comply with the amenity requirements of saved policies GD5 (Amenity) and E12 (Pollution) of the City of Derby Local Plan Review (2006).

Other Matters

13. There is no dispute that the proposal is acceptable having regard to the other prior approval matters under Paragraph MA.2. of the GDPO not covered under the main issue. I find no reason to conclude otherwise. This takes into account the matters that can be suitably controlled by condition as set out below.
14. A third-party contends that 6 parking spaces on the site are in their ownership and not the appellant. My finding that the proposal is acceptable under the terms of the GDPO does not override any private land ownership issues.

Conditions

15. Any planning permission granted for the development under Article 3(1) and Schedule 2, Part 3, Class MA of the GPDO is subject to the standard conditions set out in paragraph MA.2. For Class MA cases, Paragraph W applies which allows decision makers to "grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval".
16. I have considered the conditions suggested by the Council and I have amended these where necessary for clarity. The GPDO includes amongst its requirements that permissions granted under Class MA must be completed within a period of 3 years starting with the prior approval date. Therefore, a separate condition specifying the timescales for implementation is not required. A condition setting out the approved plans is necessary in the interests of certainty and to ensure that the submitted layout is implemented.
17. I have included the Council's suggested condition requiring a scheme of sound insulation. I have redrafted it to include specific reference to the recommendations on the appellant's noise assessment.
18. The evidence before me suggests that the site was historically a steel works and is also adjacent to a number of historical manufacturing facilities. The Council's Environmental Health team have reviewed the appellant's Phase I Desk Study Report which considers potential risks. The majority of pollutant linkages are deemed to present a low risk, however the risk of ground gases/vapours entering the building is described as 'moderate' and requiring further investigation. Therefore, I find that a condition requiring a ground gas and soil vapour investigation with remediation to be secured if necessary would address any contamination risks in relation to the building and this also aligns the findings of the Council.

19. The highway authority requested that conditions be imposed requiring a dropped vehicular footway to be installed in place of the commercial access point off Great Northern Road and requiring that no gates be permitted at the access from the public highway, both of which are necessary in the interests of providing safe access. A further condition is requested requiring that no part of the development be brought into use until the parking areas are provided with the parking bays clearly delineated in accordance with the submitted plans. This is necessary to reduce the potential for indiscriminate parking within the site which could have an effect on safe access. In these respects, the conditions are reasonably related to the prior approval considerations and are therefore attached.
20. I understand that the site is near to the flood plain of a tributary of the River Derwent. The Council has confirmed that there are no flooding risks in relation to the building but that the access and egress could be affected. A condition requiring a flood action plan could include a requirement to sign up to the Environment Agency's flood warning service. In turn this would provide scope for example for vehicles parked near the site entrance to be moved to a dry location and for residents to leave the building before a flood if they so wish. In these respects, I find that a condition requiring a flood action plan would be reasonably related to the subject matter.

Conclusion

21. For the reasons above, I conclude that the appeal should be allowed and prior approval is deemed to be granted.

M Russell

INSPECTOR

Schedule of conditions

- (1) The development hereby approved shall be carried out in accordance with the following approved plans: Drawing nos EMS-IDS-552-DR-A-00-10-001 Rev A (Site Location), EMS-IDS-552-DR-A-00-10-002 Rev A (Block Plan), EMS-IDS-552-DR-A-00-10-003 Rev A (Block Plan – Proposed), EMS-IDS-552-DR-A-00-10-004 Rev A (Proposed Block Plan – Showing Parking), EMS-IDS-552-DR-A-00-10-007 Rev A (Proposed Ground and First Floor Plans), EMS-IDS-552-DR-A-00-10-008 Rev A (Proposed Elevations, Sections and Roof Plan) and EMS-IDS-552-DR-A-00-10-009 Rev A (Proposed Ground and First Floor Plans Showing Fire Strategy).
- (2) Prior to the first occupation of the dwellings hereby approved, a scheme of sound insulation shall be submitted to, and approved in writing by, the Local Planning Authority. The scheme shall be designed with reference to the findings and recommendations in the 'Assessment of noise from external sources' Report Reference 13502.01.v1 (July 2022). The scheme shall take account of the need to provide adequate ventilation, which will be by mechanical means where an open window or good acoustic design would not achieve the following criteria. The scheme shall be designed to achieve the following criteria with the ventilation operating: Bedrooms 30dB LAeq (15 Minutes) (2300 hrs – 0700 hrs) Living/Bedrooms 35 dB LAeq (15 Minutes)

(0700 hrs – 2300 hrs) All Other Habitable Rooms 40 dB LAeq (15 Minutes)
(0700 hrs – 2300 hrs) All Habitable Rooms 45 dB L_{Amax} to occur no more than 10 times per night (2300 hrs – 0700 hrs). The scheme as approved shall be validated by a competent person and a validation report submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented in full and retained thereafter.

- (3) Before development commences a ground gas and soil vapour investigation shall be carried out to determine the level of risk posed to the health of future site users. A detailed report of the investigation and risk assessment will be required for submission to the Local Planning Authority for written approval prior to commencement of the development.

In the event that the ground gas and soil vapour investigation identifies significant risks to human health, a Remediation Strategy will be required in order to identify and detail the measures needed to mitigate the identified risks. The Remediation Strategy shall be completed in accordance with Land Contamination Risk Management Guidance and submitted for written approval by the Local Planning Authority prior to commencement of the development.

Any risk reduction measures detailed within the agreed Remediation Strategy shall be implemented in full. A Validation Report shall subsequently be produced which adequately demonstrates that the measures have been implemented in full, that all significant risks to human health have been removed and that the remediation targets have all been met. The Validation Report shall be submitted to and approved in writing by the Local Planning Authority prior to the development being occupied.

- (4) Before the building is first occupied for residential purposes a dropped vehicular footway crossing shall be constructed at the site entrance in accordance with the Highway Authority specification to the satisfaction of the Local Planning Authority. Thereafter, no gates shall be permitted at the vehicular access point.
- (5) No part of the development hereby permitted shall be brought into use until the parking areas are provided, with the parking bays clearly delineated in accordance with the approved plans. The parking areas shall not thereafter be used for any purpose other than the parking of vehicles.
- (6) Before the building is first occupied for residential purposes, a flood action plan shall be submitted to the Local Planning Authority. The flood action plan shall include actions that should take place in a flood event and provisions to ensure occupiers of the building are signed up for the Environment Agency's flood warning service.