

Appeal Decision

Site visit made on 6 February 2024

by K Townend BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 April 2024

Appeal Ref: APP/Q3060/W/23/3329589

10 Poultry, Nottingham City, Nottingham NG1 2HW

- 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 Novaheights Limited against the decision of Nottingham City Council.
 - The application Ref 22/01086/PFUL3.
 - The development proposed is extension of existing HMO into vacant first floor storage space to create 2 additional bedrooms.
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Decision

1. The appeal is allowed, and planning permission is granted for extension of existing HMO into vacant first floor storage space to create 2 additional bedrooms at 10 Poultry, Nottingham City, Nottingham NG1 2HW in accordance with the terms of the application, Ref 22/01086/PFUL3, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) Prior to the first occupation of the development hereby approved a scheme for protecting the proposed noise-sensitive development from noise from the adjacent premises, 6-9 Poultry, shall have been submitted to and approved in writing by the local planning authority. The scheme shall follow the principles set out in the Acute Acoustics Ltd Updated Noise Assessment, dated 6th October 2022, reference 1864 Nottingham – Poultry NPPG [First Floor] [Rev B] and the Acute Acoustics, Technical Note, dated 23/08/2023, ref 20221864 Nottingham – 10-11 The Poultry, and shall achieve the following internal noise levels:
 - i) Not exceeding 30dB LAeq (1 hour) and not exceeding NR 25 in bedrooms for any hour between 23:00 and 07:00;
 - ii) Not exceeding 45dB L_{Amax} (measured with an F time rating) in bedrooms for any hour between 23:00 and 07:00;
 - iii) Not exceeding 35dB LAeq (1 hour) and not exceeding NR 30 for bedrooms and living rooms for any hour between 07:00 and 23:00;All works which form part of the scheme shall be completed before any part of the noise sensitive development is occupied and retained thereafter.
 - 3) Prior to the first occupation of the development hereby approved a verification report shall be submitted to and approved in writing by the local planning authority to confirm that the noise sensitive development meets the required internal noise levels as prescribed by condition 2.

Preliminary Matters

2. As part of the appeal, the appellant has submitted a Technical Note¹ (TN) to supplement the Noise Assessment² and Updated Noise Assessment³ (the NA). The TN does not add new noise survey data and seeks to provide additional information and a response to the concerns of the Council Environmental Health Officer. The additional information does not fundamentally alter the scheme in terms of its design or the proposed mitigation measures but provides additional information on the performance of the mitigation measures. Whilst I appreciate that the information is technical in nature, given that it relates to matters of noise attenuation, the Council have had sight of it and had the opportunity to comment on it. Furthermore, I do not consider that neighbouring occupiers would be prejudiced in my accepting of the information.
3. From the evidence before me the lawful use of the adjacent premises is for a public house, for the sale of food or drink for consumption on the premises, with associated living quarters on the second floor. The consent is subject to conditions, including a condition to ensure that music would not cause disturbance to the occupiers of nearby premises by reason of noise or vibration.
4. Both main parties agree that the first floor of the adjacent premises has been changed to a nightclub which would be a sui generis use. However, it is not for me, under this current S78 appeal, to determine whether the nightclub use is appropriate or not. Neither is it for me to determine whether the conditions on the 1997 consent⁴ are enforceable, or to determine whether a future planning application for a change of use to a nightclub would be successful. Notwithstanding this, I have made my assessment on the basis of the evidence before me.
5. From the evidence submitted, and from my site visit, the proposed development has commenced. I have, therefore, dealt with the appeal on a retrospective basis. However, this has no bearing on my decision.
6. A revised National Planning Policy Framework (the Framework) came into force on the 19 December 2023 with a further change published on 20 December. The paragraphs most pertinent to this appeal are unchanged, other than their numbering. Having considered the revisions and in light of the principles of natural justice, in this instance I do not consider it necessary to invite any submissions from the parties on the revised Framework.

Main Issue

7. The main issue is whether the proposed development would provide acceptable living conditions for the future occupants of the proposed rooms, with particular regard to noise from the adjacent premises, and whether or not unreasonable restrictions would be likely to be placed on the adjacent business as a result of the proposed development.

¹ Acute Acoustics, Technical Note, dated 23/08/2023, ref 20221864 Nottingham – 10-11 The Poultry

² Acute Acoustics Ltd, Noise Assessment dated 18th July 2022, ref 1864 Nottingham – Poultry NPPG [First Floor]

³ Acute Acoustics Ltd, Noise Assessment dated 6th October 2022, ref 1864 Nottingham – Poultry NPPG [First Floor] [Rev B]

⁴ Council reference PR/97.01.0128

Reasons

8. The appeal site comprises part of the first floor of the existing four-storey terraced property located within Nottingham City Centre. Notwithstanding my observations at the visit and the comments of the interested parties, the first floor, as shown on the existing floor plans, comprises a two-bedroom flat and retail storage space. The second and third floor of the property are already in residential use as Houses in Multiple Occupation (HMOs).
9. The proposal is to convert the retail storage space at first floor into one bedroom, a kitchen, and a living room and to convert the existing kitchen/living room associated with the existing two-bedroom flat into a further bedroom, thereby providing a four-bedroom unit at first floor. The proposal would not include any external alterations and access would be provided from within the existing residential flat.
10. Policy HO6 of the Nottingham City Land and Planning Policies Development Plan Document, Local Plan Part 2, January 2020 (LAPP) supports the extension or alteration of existing HMOs, including development that facilitates an increase in the number of occupiers. The support within HO6 is subject to a number of criteria, including consideration of the characteristics of the building and its immediate locality and consideration of the amenity of the site, linking to Policy DE1 of the LAPP. Paragraph 4.61 of the supporting text of Policy HO6 advises that the consideration of the characteristics of the locality may include the nature of, and relationship of, the site to neighbouring uses.
11. Policy DE1 of the LAPP, which is an overarching design and use policy, amongst other matters, seeks to ensure that all development provides a satisfactory level of living conditions for the occupiers of the development, including considering noise.
12. Policy HO6 and DE1 of the LAPP, albeit predating Paragraph 193 of the Framework and the agent of change principle, both accord with the advice contained within the Framework which states, at paragraph 180, that planning decisions should seek to prevent new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of noise pollution, amongst other matters. Paragraph 191 advises that all new development should be appropriate for its location taking into account the likely effects, including cumulative effects, of pollution on health and living conditions. Paragraph 191 also advises that development should mitigate and reduce to a minimum the adverse effect and avoid significant adverse effects.
13. The surrounding area is characteristic of a city centre with a mix of commercial and leisure uses with residential and office uses above. The tram runs along the road outside the appeal site. Immediately adjacent to the appeal site is a late-night drinking establishment. Even if the nightclub use is not the lawful use the adjacent premises, from the evidence before me, it is a late-night drinking establishment and part of the important nighttime economy of the City Centre. The proposed development would result in one bedroom, the kitchen and living room having a shared party-wall with the adjacent late-night drinking establishment.
14. The application was accompanied by a NA which considers the potential effect of noise from the adjacent premises on the future occupants of the proposed

development. In that regard the current appeal is materially different to the High Court decision referred to by the interested party. The NA advises that measurements were taken on site within the proposed bedroom and living room over the period covering the end of a week and a weekend. The TN confirms that the noise survey was carried out during the busiest period for entertainment venue and assessed the noise emanating from the adjacent premises at intervals during the whole of the period.

15. The survey results detailed in the NA indicate that noise from the adjacent premises, and other noise sources on the street, including noise from screams, shouts, door slams, bottles being dropped into a bin and vehicles on the road, were audible within the appeal site.
16. This reference to noise outside the adjacent premises, including noise on the street provides evidence that the NA has taken into consideration the potential noise impact from customers to the adjacent premises whilst they are outside the premises, including using the smoking area and exuberant behaviour associated with alcohol consumption. The survey did not exclude such noise and it is highly likely that the smoking area was in use and that customers were noisy during the period covered by the survey.
17. Notwithstanding whether the first floor of the adjacent premises is lawful or not, notwithstanding whether the use of the adjacent premises has intensified or changed its music playing systems and although the NA does not include any precautionary allowance for variation in music played the NA has assessed the noise emanating from the existing use at the time of the survey. I, have no substantive evidence that there was not variation in the music played during the survey time. Consequently, I consider that the NA and the survey carried out is based on a worse-case scenario.
18. The NA details that the window to the proposed bedroom, facing the road to the front of the site, has already been upgraded with secondary glazing and I saw this at the time of my visit.
19. However, the NA also advises that, even with the above existing mitigation and furniture in the rooms, the noise levels would still exceed the LAeq(1hr) levels recommended by Nottingham City Council. The NA, therefore, proposes additional mitigation measures in the form of additional insulation to the internal walls of the bedroom and living room, upgrading of the glazing in the windows, and the insertion of an inner lobby to the rear door from the living room, as shown on the plan within the NA.
20. Although the NA does not provide any details of the noise reduction levels that would be provided by the proposed mitigation measures this information has been provided within the appellant's Technical Note (TN). The TN has detailed the performance measures of the proposed additional insulation at each low frequency band, with the sound reduction index provided at Appendix A. Although the performance at 40Hz is not provided the appellant's acoustic consultant has predicted a 11dB reduction based on the 21.1dB reduction at 50Hz. The TN provides the additional information required to show that the proposed insulation panels would reduce the noise within the proposed development to below the recommended levels.
21. The mitigation would not be provided across all floors of the building and, consequently there is a risk of flanking transmission. However, the upper floor

of the building is already in residential use and the lower floor will be retained in a commercial use. The plan at Appendix A details the position of the insulation panels and the introduction of an internal lobby to mitigate sound at the rear door of the flat to achieve the best possible sound reduction from flanking transmission. Moreover, a thicker partition is also offered within the TN and could form part of the noise mitigation scheme.

22. Although the Council has disputed whether the mitigation measures detailed in the NA would be sufficient and satisfactory to prevent noise issues the Council have not commented on the additional information provided in the TN. Moreover, the Council does not provide any technical evidence of its own. Despite the concern of the Council and the operator of the adjacent premises there is no substantive evidence to counter the submissions from the appellant's acoustic consultant.
23. On the basis of the evidence before me, the mitigation measures proposed in the NA, as supported by the TN, would ensure that the noise from the adjacent premises would not result in a significant adverse effect on the quality of life of the occupants of the proposed development or be harmful to the living conditions of the future occupants, by reason of noise. The evidence provided shows that the noise reduction, that would be provided by the mitigation measures, would bring the noise levels to below the maximums set out in the condition recommended by the Council.
24. I, therefore, find that, subject to the proposed condition, the noise mitigation measures would reduce the noise levels within the proposed development to a level which would not result in unacceptable adverse effects on the living conditions of the future occupants of the proposed rooms, irrespective of whether the adjacent premises were operating as a public house or nightclub. The TN has also confirmed that the development would be fitted with mechanical ventilation and that post-completion monitoring would be carried out to ensure that the noise reduction levels are achieved.
25. I acknowledge that evidence has been provided of previous noise complaints from residential properties near the adjacent premises, including the existing properties in 10 Poultry. I also cannot guarantee that the future occupants of the proposed development would not complain about noise from the adjacent premises, or other city centre nighttime economy uses.
26. However, there is no substantive evidence before me that any complaints have previously resulted in restrictions being placed on any of the existing businesses or that any complaints from the future occupiers of the proposal would result in such restrictions. Sound insulation mitigation is proposed, as recommended by the interested party representation, and I have found that mitigation can be carried out to reduce the noise levels within the proposed development to below the maximums set out in the recommended condition. The mitigation would, therefore, protect the future occupiers from unacceptable levels of noise.
27. Nevertheless, it must also be recognised that the proposal is within a city centre where commercial, leisure and residential uses are found in close proximity to each other and where a certain amount of noise is to be expected. The proposed development would, subject to the mitigation, integrate with the existing adjacent business and I have no evidence that the proposal would result in unreasonable restrictions being placed on the adjacent business, or

that complaints would result in the adjacent business having their licence removed, as a result of the proposed development, in accordance with Paragraph 193 of the Framework and the Planning Practice Guidance: Noise. As such I am not convinced that the adjacent business, or any other nighttime economy use, would be financially affected as a direct result of the proposed development.

28. For the above reasons, the development would provide acceptable living conditions for the future occupants of the proposed rooms, with particular regard to noise from the adjacent premises and unreasonable restrictions would not be likely to be placed on the adjacent business as a result of the proposed development. I, therefore, find no conflict with the requirements of Policy 10 of the Greater Nottingham, Broxtowe Borough, Gedling Borough, Nottingham City, Aligned Core Strategies Part 1 Local Plan, adopted September 2014 (ACS) which seeks to ensure that development creates a safe, inclusive, and healthy environment and consider the effect on the living conditions of occupiers.
29. For the same reasons, the proposal would comply with the requirements of Policies DE1, HO6 and IN2 of the LAPP which, taken together, support extensions of existing HMOs and seeks to ensure a satisfactory level of living conditions for the occupiers of the development, taking account of noise, including existing noise pollution.

Other Matters

30. The appeal site is located within the Old Market Square Conservation Area (CA). Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special attention be paid to the desirability of preserving or enhancing the character or appearance of the conservation area. The CA is centred around the Old Market Square and the historic heart and central focus of the city. The high architectural quality and features, historic buildings, and street layouts and spaces all contribute positively to the character and appearance of the CA as a whole, and thereby to its significance as a designated heritage asset. Bearing in mind the proposed works are all internal the character and appearance of the CA as a whole would be preserved. I note that the Council raised no objection in this regard either.
31. The Council House, Exchange Building and adjoining shops and bank on the opposite side of the road is a Grade II* Listed Building. Mindful of the statutory duty set out in s66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I have had special regard to the desirability of preserving its setting. The setting of this grand building is appreciated within its city centre context and the relationship of the civic building with the Old Market Square. The city centre context contributes positively to the significance of the setting of the listed building. Nevertheless, given the extent of the proposal before me, I consider that it would preserve the setting of this listed building and the contribution it makes to its significance. I note the Council had no concerns in this regard either.

Conditions

32. The Council has provided a list of conditions that it considers would be appropriate and the appellant has had an opportunity to comment on these. I

have considered these in light of the Framework and the Planning Practice Guidance.

33. As I have found the details submitted with the appeal are sufficient, I have included a condition requiring the noise mitigation measures to be implemented in accordance with the submitted details, and to achieve the internal noise levels recommended.
34. The conditions I have imposed would also provide sufficient mitigation and I do not consider that there is a need for a Section 106 Legal Agreement, or a Deed of Easement as suggested by the third-party representation.

Conclusion

35. The proposed development is in accordance with the development plan when considered as a whole. Having had regard to all matters raised, I conclude that the appeal should be allowed, subject to conditions.

K Townsend

INSPECTOR