



Appeal Decision

Site visit made on 11 June 2024

by C Carpenter BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 June 2024

Appeal Ref: APP/K0235/W/23/3327882

30-32 High Street, Bedford MK40 1SP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by The Garcha Group against the decision of Bedford Borough Council.
 - The application Ref is 23/00747/FUL.
 - The development proposed is change of use of nightclub (sui generis) to retail on the lower ground floor, restaurant on the ground floor, three flats on the first floor (C3) and extension of second floor to create an additional two flats (C3), fenestration alterations and the erection of a bin store and cycle store.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development above is taken from the application form. I have removed words not describing acts of development in the interest of clarity.
3. The National Planning Policy Framework (the Framework) was updated in December 2023, during this appeal. However, insofar as the contents are relevant to this appeal, the Framework has not changed. Therefore, I am satisfied no party would be disadvantaged by not having the opportunity to comment on the revised Framework.

Main Issue

4. Whether future occupiers of the proposed development would be likely to experience acceptable living conditions, with particular regard to noise and disturbance.

Reasons

5. The appeal site is in a busy part of Bedford town centre that includes a mix of shops, food and drink outlets, night-time entertainment venues and residential accommodation. Vehicular traffic can pass down the High Street in a single lane in one direction. The Standard public house and live music venue is next door to the appeal site and has a rear upstairs outside terrace.
6. According to the appellant's Noise Impact Assessment (NIA), the front of the development would primarily be affected by noise from road traffic with occasional mixed sources including commercial noise along the High Street.

The risk of noise from this source is assessed as high during both daytime and night-time.

7. To the rear, the pub's rooftop terrace would be very close and noise from this, along with noise breakout through the building structure, would result in 'worst-case' noise levels in the proposed rear flats. The risk of noise from The Standard during a live performance or DJ set is assessed as high, which includes a measurement of 94dB LAeq,T after midnight on the terrace. The Council states live music or DJ sets take place at The Standard 'often' and there is no pertinent evidence before me to suggest otherwise.
8. There would also be noise from traffic and plant, principally in the form of existing rooftop air conditioning units, at the rear of the development. The NIA did not measure noise levels from the existing plant but assessed it as likely to result in a significant adverse impact.
9. The NIA notes that intermittent and/or tonal type noise from commercial or industrial uses is often more annoying to residents than noise from transportation sources, such as road traffic, at similar levels.
10. Proposed noise mitigation measures include high performance acoustically upgraded thermal double glazing and mechanical ventilation with heat recovery (MVHR). With these in place, and the windows of the flats closed, the NIA predicts internal noise levels in habitable rooms would fall within the acoustic design criteria specified in British Standard 8233:2014 *Guidance on sound insulation and noise reduction in buildings*. This finding is not disputed by the Council.
11. Future occupiers would have the choice to open their windows. Nevertheless, the proximity of, and noise levels from, The Standard and other sources in the rear flats would be so great that sleeping would be very difficult indeed unless the windows were shut. Even listening to normal conversation or the television would be challenging with the windows open if live music or a DJ were playing. The proposed flats would be studio apartments or have only one bedroom, so there would be little scope to move to internal space unaffected by noise. Therefore, it is very likely that occupants of the rear flats would need to keep their windows closed for a high proportion of the time, particularly in the evenings and at night.
12. Moreover, the proposed MVHR would itself generate noise. Design details would need to be secured by condition were the appeal to be allowed, so there is insufficient information for me to be sure of the noise levels this new plant would generate. Absent evidence to the contrary, the new MVHR could create additional noise disturbance to future occupants, which would be a further disincentive to opening windows.
13. There would also be some noise breakout from the proposed ground floor restaurant to the first-floor flats in the worst-case adjacent rooms, even following installation of sound insulation in the separating floor. Therefore, noise in the first-floor rear flats would be coming from several proximate sources, even with the windows closed. This is notwithstanding that the proposed restaurant would be likely to generate less noise than the former nightclub it would replace.

14. There is little evidence about anticipated noise levels in the proposed external amenity space. Nevertheless, given its proximity to the primary noise source, this would be unlikely to provide a place of quiet refuge.
15. Planning Practice Guidance on noise advises care should be taken when considering mitigation to ensure the envisaged measures do not make for an unsatisfactory development¹. In this instance, whilst I accept noise could be mitigated to reduce adverse impacts, I find the resulting need to shut all windows for such long periods would be unsatisfactory, whether or not future occupants have chosen to live there. I therefore agree with the comment of the Council's Environmental Health Officer that, where windows are required to remain closed for significant periods of time, this may be unacceptable to residents.
16. I acknowledge individuals' tolerance of noise and/or heat will differ, and I accept that during warmer weather MVHR would enable occupants to mitigate overheating. Nevertheless, most occupiers would have a reasonable expectation of some natural ventilation and cooling during evenings and at night. The degree and extent to which occupiers would be reliant on closed windows and artificial ventilation in compact apartments with little quiet external space would, in my judgement, go beyond this reasonable expectation. I therefore find there would be a significant adverse effect on the quality of life of future occupants.
17. I note the existing second floor flat at the appeal site does not benefit from acoustic mitigation or mechanical ventilation. However, this flat is at the front of the site so is less affected by noise from The Standard than the proposed rear flats would be. Moreover, as noted above, traffic noise can be less aggravating than intermittent noise from a pub. Consequently, this consideration does not overcome the harm I have found.
18. Several examples of noise guidance produced by other local planning authorities have been brought to my attention, which refer to alternative means of ventilation where closed windows are to be relied upon. Such general guidance is not sufficiently specific or directly related to the circumstances before me to alter my finding on this issue.
19. My attention has also been drawn to four appeal decisions in which Inspectors have been content to support mechanical ventilation during periods when windows are closed.
20. In the Tower Hamlets case², a night-time venue and residential uses were proposed to be co-located within a single new-build development and a condition was imposed on the operating hours of the venue as part of the noise mitigation strategy. Such a measure is not possible in this appeal, because the noise-generating venue already exists. In the Bedford case³ there were existing residential uses closer to the existing business use than those proposed, and the site was not in a town centre. In the Luton example⁴, future occupants would only on occasion be subject to an unacceptable level of noise. I consider it reasonable to assume reliance on MVHR would also have been occasional in

¹ Paragraph: 010 Reference ID: 30-010-20190722

² Reference APP/E5900/W/23/3318344

³ Reference APP/K0235/W/21/3288726

⁴ Reference APP/B0230/W/20/3253139

these circumstances. In the Swindon appeal⁵, consideration of living conditions related primarily to air quality rather than noise and the site was suburban.

21. Therefore, the circumstances in these appeals are not sufficiently closely related to be directly comparable to those before me. Nor am I persuaded they are any more directly relevant to this appeal than those cited by the Council. In any event, I am required to determine this appeal on its own merits.
22. I recognise the growing number of dwellings within Bedford Town Centre and note the Council has supported mechanical ventilation in some instances to secure acceptable living conditions in accordance with its policies. However, I am not aware of the full details of these permissions, or the conditions imposed on them. As regards the existing flats at 22-24 High Street, I am not persuaded on the evidence before me that these are as close to The Standard's upstairs terrace as those proposed in this appeal. I am also not aware of the size or layout of those flats.
23. The characteristics of each site are different, and evidence before me about other flats near other noisy town centre uses is not sufficiently compelling to persuade me their circumstances are directly comparable to those in the appeal scheme. Furthermore, the absence of recorded noise complaints does not in itself demonstrate that every part of the Centre is appropriate for residential occupation.
24. I acknowledge that Policies 15 and 16 of the Bedford Borough Local Plan (BBLP) support residential use above ground floor level throughout the town centre and reoccupation of upper floors in the High Street. However, the supporting text to these Policies notes the concentration of food and drink and nightclub uses on the High Street, many of which open until the early hours, has potential to increase the risk of anti-social behaviour and disturbance to residents, particularly in the evenings. The development plan must be read as a whole and BBLP Policy 47S also requires proposals to be appropriate to their location having regard to existing noise generating uses. This is consistent with the Framework, which refers to appropriate sites when encouraging residential development in town centres to help ensure their vitality.
25. Given The Standard is part of the High Street's night-time economy and generates noise until the early hours, I find the flats proposed so close to it at the rear of the development would not be appropriate to their location for the reasons set out above. I find this even with the noise mitigation measures proposed and even if information about them was provided to prospective occupants to reduce the risk of future complaints adversely affecting this established business.
26. The appellant refers to a High Street Action Zone, but there is little before me to substantiate its status or objectives, so I give this limited weight.
27. For the above reasons, I conclude future occupiers of the proposed development would not be likely to experience acceptable living conditions, with particular regard to noise and disturbance. This is contrary to BBLP Policy 47S. It is also contrary to the Framework, which states development should promote health and well-being, with a high standard of amenity for future users.

⁵ Reference APP/U3935/W/21/3281658

Other Matters

28. The appeal site is within the Bedford Conservation Area (CA), which comprises much of the town centre on both sides of the River Great Ouse. Having regard to the CA Appraisal, its significance as a heritage asset is derived from features including the surviving medieval street pattern, relationship with the River and rich legacy of historic structures that contribute to its character as a prosperous market town. The appeal site is a 19th century commercial building and part of the historic High Street. There would be no material change to the frontage of the building and the proposed upper floor extension to the rear would be largely unseen from within the CA. The proposed change of ground floor uses would result in some changes to activity on the High Street. Nevertheless, I find the proposed development would have a neutral effect on the character and appearance of the CA, which would be preserved; and there would be no harm to the significance of the CA as a heritage asset.
29. The proposed creation of five additional residential units would support the Framework's objective of significantly boosting the supply of homes. However, the number of new homes proposed is relatively modest and does not outweigh the harm I have identified.
30. The Council has raised no concern with the scale, appearance or internal layout of the proposed development, its effect on the living conditions of neighbouring occupiers or highway safety. On the evidence before me, I see no reason to disagree. However, an absence of harm in these regards is a neutral factor.
31. The specific circumstances relating to the appeal proposal would be unlikely to be repeated elsewhere in Bedford Town Centre. Therefore, the appellant's concerns about precedent were the appeal to be dismissed are not a significant consideration.
32. I note the appellant's comments about the advice that was received from the planning case officer as part of the determination of the planning application. However, I have determined this appeal on its individual planning merits and none of the other matters outweigh or overcome my conclusion on the main issue.

Conclusion

33. I have found the proposal conflicts with the development plan, read as a whole. No other material considerations, including the Framework, have been shown to indicate that a decision should be taken otherwise than in accordance with it. Therefore, the appeal should be dismissed.

C Carpenter

INSPECTOR