



Appeal Decision

Site visit made on 4 June 2024

by N Bromley BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 July 2024

Appeal Ref: APP/D4635/W/24/3340410

Saturn Centre, Spring Road, Wolverhampton WV4 6JX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class MA, of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr M Ayub, of Crown Choice Investments Ltd, against the decision of City of Wolverhampton Council.
 - The application Ref is 23/00003/PAOTH.
 - The development proposed is change of Use from 4 storey office building to dwelling houses.
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Decision

1. The appeal is dismissed.

Background and Main Issues

2. Under Article 3(1) and Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO), planning permission is granted for the change of use from commercial, business and service (use class E) to dwellinghouses (use class C3) subject to certain limitations and conditions.
3. However, 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 conditions set out in Paragraph MA.2(2). Two of these conditions are MA.2(2)(a) which relates to transport impacts of the development, particularly to ensure safe site access and MA.2(2)(d), impacts of noise from commercial premises on the intended occupiers of the development.
4. The prior approval was refused on the basis that the proposal would not meet the requirements of these two conditions. There is no dispute that the other criteria of Class MA are satisfied. As such, there is no need to give them further consideration in this decision.
5. 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'. Whilst I have had regard to the guidance within the National Planning Policy Framework (the Framework), this is only where it is relevant to matters of transport and noise.

6. There is however no statutory obligation to decide a prior approval appeal on the basis of s38(6) of the Planning and Compulsory Purchase Act 2004 as the principle of the development is established through the grant of permission by the GPDO. As such, the provisions of Part 3, Class MA of the GPDO do not require regard to be had to the development plan. Nevertheless, the development plan policies may still be relevant in prior approval appeals, but only insofar as they relate to the relevant matters, and only as evidence to support, rather than being the basis of, the planning judgement to be made.
7. Accordingly, I consider the main issues in this case to be whether the proposal would be permitted development under Class MA, with particular regard to;
 - the impacts of noise from commercial premises on the intended occupiers of the development; and
 - whether the transport impacts of the development would be acceptable, particularly to ensure safe site access.

Reasons

Noise

8. The appeal site is a large four storey office building located within an area characterised by large industrial and commercial premises. The appeal building occupies a prominent position on Spring Road, at its junction with an access road that serves a number of industrial and commercial buildings and land. It is also in close proximity to a railway line.
9. The Framework at paragraph 135 requires developments to ensure a high standard of amenity for existing and future users. Furthermore, paragraph 191 of the Framework advises that new development should be appropriate for its location taking into account the likely effects of pollution on health and quality of life. Paragraph 193 also seeks to ensure that new development can be effectively integrated with existing businesses, and that such businesses should not have unreasonable restrictions placed on them as a result of development permitted after they were established.
10. The submitted Environmental Noise Assessment (ENA), dated March 2022, identifies that a noise measurement survey was carried out over a 24-hour period on a weekday. The ENA found that high levels of noise were recorded from road traffic activity during the day and at night. As a result, the appellant identifies that windows of the proposed dwellings would need to be closed to ensure that acceptable internal noise levels can be achieved.
11. Traffic noise is not a material consideration for permitted development under Class MA. However, during my site visit, on a weekday morning, reasonable levels of noise from other sources were also audible within the building.
12. My attention has also been drawn to a recently constructed large industrial unit on neighbouring land, within close proximity to the appeal site. The owner of the unit has objected to the proposed development and identifies that the business includes overnight manufacturing operations. This is also supported by other interested parties who live nearby. They have highlighted that the effect of neighbouring industrial operations has a negative effect on their welfare and quality of life.

13. The ENA is now over two years old, and it is evident that the noise environment in the locality has changed since the original noise survey was undertaken. I am also mindful that the survey was limited to a 24-hour period, which seems overly restricted in the context of an environment such as the appeal site. As a consequence, I am not satisfied that the ENA is robust or that its conclusions can be relied upon in the context of the existing noise environment within the area. Therefore, appropriate mitigation, to protect the living conditions of future occupiers from noise and disturbance, cannot be suitably agreed and controlled.
14. For the above reasons, I am not satisfied that the proposed development would provide acceptable living conditions for the occupiers of the new residential units. Adopting a precautionary approach, I can only conclude that the impacts of noise from existing commercial premises on the intended occupiers of the development would be unacceptably harmful. Accordingly, the proposal would fail to satisfy provision MA.2(2)(d) of Schedule 2, Part 3, Class MA of the GPDO.

Transport impacts

15. The existing access to the site is taken from the shared access road off Spring Road. The shared access road serves a number of industrial and commercial buildings and land. Therefore, it is used by a variety of vehicles, including HGV's.
16. The proposed development would utilise the existing, established access to the site that leads to an existing parking area at the rear of the building for approximately 149 vehicles. An enclosed bin store and covered cycle storage for 20 bicycles would also be provided.
17. The Framework, at paragraph 114, requires that safe and suitable access is available for all users. Paragraph 116(c) also states that developments should minimise the scope for conflicts between pedestrians, cyclists, and vehicles.
18. The submitted Transportation Statement confirms that the access arrangements for the site would remain unaltered. There is no suggestion by the Council that the existing access is substandard or unsafe. Therefore, without any substantiated evidence to the contrary, I am satisfied that the access is safe and acceptable for the proposed residential development.
19. The proposed development would primarily comprise one bedroom units, with a large amount being single occupancy. Therefore, I accept that 149 car parking spaces for 77 dwellings would be an acceptable number of spaces. I am also content that the parking arrangements for the proposed development would be safe, and spaces can be managed appropriately, to ensure that future occupiers and visitors have a sufficient number of spaces. Therefore, the proposed development would not lead to parking problems in the locality.
20. There are footways on both sides of Spring Road and even though there is a noticeable absence of formal pedestrian crossing points on Spring Road, future occupiers would have the ability to access public transport opportunities, services, and amenities within walking distance of the appeal site. This would support the Framework's sustainable transport objectives.

21. Furthermore, despite the character of the area being industrial, I have not been provided with any conclusive evidence to demonstrate that the area is inherently unsafe for pedestrians.
22. Given the above, I consider that the transport impacts of the development would be acceptable, particularly to ensure safe site access. As such the proposal would satisfy condition MA.2(2)(a) of the GPDO.

Other Matters

23. The proposal would bring a partially vacant building back into full, beneficial use and a residential use would contribute to housing supply. However, my consideration of the case is solely limited to matters set out in the GPDO.

Conclusion

24. In conclusion, the transport impacts of the development are acceptable. However, the adverse impacts of noise from commercial premises on the intended occupiers of the development are sufficient to justify dismissing the appeal.
25. Consequently, for the reasons given above, the appeal is dismissed.

N Bromley

INSPECTOR