



Appeal Decision

Hearing held on 23 July 2024

Site visit made on 23 July 2024

by Bhupinder Thandi BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd August 2024

Appeal Ref: APP/M5450/W/24/3341699

The Power House, Unit 5, Chantry Place, Harrow HA3 6NY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) 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 SHF Property Investments LLP against the decision of the London Borough of Harrow.
 - The application Ref is P/2314/23/PRIOR.
 - The development proposed is the conversion of the first and second floor of the existing building from Class E (commercial) to residential to provide 14 flats.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by SHF Property Investments LLP against the decision of the London Borough of Harrow. This application is the subject of a separate decision.

Preliminary Matters

3. The appellant has produced a planning obligation by Unilateral Undertaking (UU) under Section 106 of the Town and Country Planning Act 1990. The UU would restrict the number of future occupiers of each of the units in line with occupancy levels outlined in the Nationally described space standards (NDSS). I have addressed this in my reasoning below.
4. I have given due regard to the National Planning Policy Framework (the Framework) and the proposed reforms to the planning system so far as relevant to the subject matter of the prior approval and the stage of preparation.

Main Issue

5. The main issue is whether the proposed development would be granted planning permission by Article 3(1) and Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (GPDO), with particular regard to the following:
 - flooding risks in relation to the building;

- impacts of noise from commercial premises on the intended occupiers of the development;
- the provision of adequate natural light in all habitable rooms of the dwellinghouses; and
- whether the proposal would accord with the provisions of the NDSS; and
- whether the proposal would fall within the provisions of permitted development under Schedule 2, Part 3, Class MA of the GPDO.

Reasons

Flood risks in relation to the building

6. The Framework sets out that inappropriate development in areas of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere.
7. The Environment Agency Flood Map for Planning shows that the appeal site is located in Flood Zone 1 meaning that there is a low probability of flooding from rivers and sea. That said, the site is located in an area with a high chance of surface water flooding. This is likely on account of the site's urban location and extensive hard surfacing around the building.
8. The appellant's site-specific Flood Risk Assessment indicates that in the external areas of the site flood levels would be between 0.3m – 0.6m during a 30-year return period and between 0.6m – 0.9m during a 100-year and 1000-year return period.
9. I concur with the appellant that the risk of flooding within the building is likely to be very low given the proposal relates to the first and second floor of the building and above predicted flood levels. However, future residential occupiers would be more vulnerable to the risks of flooding in respect of access and egress, as mentioned by the Council.
10. The two points of access and egress for the intended users of the site would consist of a pedestrian and cycle access, to the north of the building, leading off Headstone Lane and vehicle access from Chantry Place.
11. The pedestrian and cycle access would be new; formed of a ramp to be built from a metal frame structure with no earthworks around it. The appellant advises that the flood map data shows no flood depths in the area between the entrance to the building and the proposed ramp and therefore safe entry and egress can be achieved.
12. The Council dispute this, however, no substantive evidence to support their position has been presented. As such, there is nothing before me to suggest that the information relied upon by the appellant in this regard is unreliable or inaccurate.
13. Even if this area was subject to flooding future occupants would only have to cross a very short distance between the entrance and the proposed ramp to reach safe ground above flood depths. The design of the ramp, suggested by the appellant, is unlikely to impede water and the velocity of water passing the

ramp in this area would be low and unlikely to pose a significant hinderance for persons or represent a danger to life. Furthermore, a Flood Warning and Evacuation Plan, outlining an emergency plan and escape in the event of a flood event, could be secured via condition.

14. Therefore, in my judgement subject to the provision of an external ramp, a safe access and escape route for future occupiers in the event of flooding would be provided.

Impacts of noise from commercial premises on the intended occupiers

15. The Power House is a three storey building formed of offices and an industrial unit located next to established industrial and commercial premises. The building is positioned between a railway line and Headstone Lane.
16. The proposal for residential development would introduce noise sensitive development next to noise generating sources including the road, railway and commercial premises. Therefore, the living conditions of the intended occupiers could be affected by noise during the daytime and into the evening.
17. The appellant's Noise Assessment shows that the prominent source of noise locally is traffic along Headstone Lane and the railway rather than from neighbouring commercial premises. The assessment shows average ambient noise levels of 62 LAeq dB during the day and 54 LAeq dB at night time.
18. The assessment shows that the average internal noise levels, with all windows closed, to be 29 LAeq dB. This is within the desirable internal ambient noise levels for living, dining and bedroom spaces outlined in BS 8233. Such noise levels could reasonably be described as falling into the No Observed Adverse Effect Level in the Planning Practice Guidance noise exposure hierarchy table.
19. Given the existing noise climate it is likely that the living conditions of the intended occupiers could be affected by noise from the road and railway with windows open, but with upgrades to the glazing, upgrades to the insulation between the proposal and existing ground floor industrial unit and the introduction of acoustic trickle vents or a mechanical ventilation and heat recovery system acceptable acoustic conditions could be achieved.
20. Despite the Council's suggesting otherwise there is nothing credible before me to indicate that the noise assessment fails to properly consider the local noise environment or that it has not been carried out in accordance with industry standards.
21. Accordingly, I am satisfied that the impact of noise from nearby sources on the intended occupiers of the proposed development would, with the mitigation proposed, be acceptable and not significant.

Provision of adequate natural light

22. The provision of adequate natural light is not defined in the GPDO. The appellant has produced a Daylight and Sunlight Assessment (DSA) undertaken in accordance with British Research Establishment (BRE) guidance. In my view and based on the information before me, the BRE guidance is a suitable basis on which to consider whether the proposal would provide adequate natural light for future occupiers.

23. Using BRE guidance the DSA refers to various methods of assessing daylight including the predicted possible Average Daylight Factor (ADF) for proposed habitable rooms whereby BRE guidance refers to a recommended value 1% for a bedroom; 1.5% for living rooms and 2% for a kitchen. The DSA sets out that all of the rooms of the proposed development would exceed the ADF criteria.
24. I have considered the Target Daylight Factors and Daylight Distribution alongside the ADF to gain a more comprehensive overview of daylight in the proposed rooms.
25. The BRE guidance also advises that if a significant area of the working plane (normally more than 20%) lies beyond the no sky line then the distribution of daylight in the room will look poor and supplementary electric lighting will be required.
26. Overall, all rooms except for bedrooms 1 and 2 of flats 1 and 2 would comply with the 50% target in respect of Target Daylight Factors and the 80% target for Daylight Distribution.
27. On this basis, whilst the vast majority of rooms would gain adequate daylight, the amount and distribution of daylight in these four bedrooms would be poor. This is likely due to the proximity of the industrial building to these windows. That said, in terms of sunlight bedrooms are less significant as these rooms are used at night and the overall design and layout of the flats seek to provide flexible spaces and maximise natural light.
28. Furthermore, the conversion of existing buildings in urban environments are unlikely to achieve full compliance given the orientation and established spatial relationship between buildings.
29. I have paid regard to Paragraph 129(c) of the Framework which states that a flexible approach should be taken in applying guidance relating to daylight and sunlight, where they would otherwise inhibit making efficient use of a site (as long as the resulting scheme would provide acceptable living standards).
30. On balance, given these particular circumstances, the provision of natural light to habitable rooms would be acceptable.

Nationally described space standards

31. The proposed development would provide a 3-bed 5-person flat; a 3-bed 6-person flat and 12 1-bed 1-person flats. Based on this level of occupation the appellant contends that the flats would accord with the minimum gross internal space standards in the NDSS. The appellant advises that the size of the bedrooms is a deliberate design choice intended to provide a more flexible space for future occupants.
32. The Council on the other hand contend that as the double bedrooms would exceed the minimum requirement outlined in Table 1 of the NDSS both the 3-bed flats could be occupied by 6 persons and the 1-bed flats should be considered to be 1-bed 2-person flats. On this basis, the Council contend that all but two flats would fall below the minimum required floor area outlined in the NDSS and therefore would fail to provide an acceptable standard of residential accommodation for the intended occupiers.

33. Overall, the bedrooms would be large enough to accommodate a double bed, as well as space for storage, work desk and circulation space. The living spaces would be open plan living, dining and cooking areas of a size and configuration that would provide adequate space for its intended functions and activities.
34. Even if I were to adopt the Council's position in terms of occupation given the overall internal layout of the flats and the relatively small shortfall in floor area, I am satisfied that the proposed flats would provide satisfactory living conditions for future occupiers.
35. Consequently, the UU is not necessary to make the development acceptable in planning terms.

Whether the proposal would fall within the provisions of permitted development

36. Class MA of Schedule 2, Part 3, Class MA of the GPDO permits the change of use of a building and any land within its curtilage from a use falling within Class E (commercial, business and service) of Schedule 2 to the Use Classes Order to a use falling within Class C3 (dwellinghouses).
37. The development as proposed is reliant on works including replacement glazing, a pedestrian and cycle ramp from Headstone Lane to the main entrance and bin and cycle storage.
38. The proposed alterations would materially affect the external appearance of the site representing building operations and constitute development when having regard to the provisions of Section 55 of the Act.
39. My attention has been drawn to a planning application for operational development to the building including replacement glazing and pedestrian and cycle ramp which are required to make the scheme acceptable in terms of natural light, flood risk and noise.
40. The appellant has suggested that a Grampian condition could be imposed to prohibit development under the provisions of Class MA until the works forming part of the planning application has been completed.
41. Whilst I have given this matter consideration, the application is still pending determination and has not been approved. Whilst it appears that the Council are content with the proposal, it is evident that there is a degree of disagreement between the parties and an impasse in respect of the need for a planning obligation. Subsequently, there is no certainty that the planning application and the operational development required to make the scheme acceptable would be approved and implemented. Accordingly, based on the available evidence I am of the view that a negatively worded condition in this instance would not be reasonable.
42. Consequently, as Class MA does not set out that alterations to buildings are permitted development the extent of the development proposed goes beyond that permitted under Class MA. I conclude the proposal would not constitute permitted development as defined in Class MA of the GPDO.

Other Matters

43. The Council advise that the appeal site lies within a Local Strategic Industrial Site whereby the loss of an industrial premises to an alternative non-employment use is unacceptable in principle. They also contend that a

residential use in this location would risk the viability or future operation of neighbouring industrial and commercial businesses. I also note the Council's comments in respect of outlook. However, these matters are not relevant in consideration of the proposal under the provisions of Class MA of the GPDO. Therefore, I give these aspects of the Council's argument negligible weight in coming to my decision.

Conclusion

44. For the reasons set out above the appeal does not succeed.

B Thandi

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Simon James of DLP Planning Ltd

Graeme Free of DLP Planning Ltd

Ian Smith of CASS

Martin Court of Sharps Redmore

Mark Symonds of Flo Consult

FOR THE LOCAL PLANNING AUTHORITY:

Mongezi Ndlela – Area Team Leader – Development Management

Catriona Cooke – Senior Planning Officer

Hanna Miturska – Infrastructure Engineer