



Appeal Decisions

Site visit made on 25 February 2025

by **G Sibley MPLAN MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 07 April 2025

Appeal A Ref: APP/C3240/W/24/3350302

Sapphire House, Stafford Park 10, Stafford Park, Telford TF3 3AD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous prior approval was granted.
 - The appeal is made by Mr N Patel of Kalinga Holdings LTD against the decision of Telford and Wrekin Council.
 - The application Ref is TWC/2024/0406.
 - The application sought planning permission for notification for Prior Approval for a proposed change of use of a building from office use (Class B1(a) to 51no. apartments (Class C3) without complying with a condition attached to planning permission Ref TWC/2017/0198, dated 28 April 2017.
 - The condition in dispute is No 5 which states that: The development hereby approved shall be carried out strictly in accordance with the conclusions and recommendations set out in the Acoustic Consultancy Report ref. 4253-FAC-ATN-1 dated 2nd March 2017, unless otherwise agreed in writing with the Local Planning Authority. The mitigation shall include the provision of secondary glazing in MP3 and MP4 facades which shall include trickle vents as specified in the report.
 - The reason given for the condition is: In order to protect the amenities of future occupants of the residential units.
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Appeal B Ref: APP/C3240/W/24/3350305

Sapphire House, Stafford Park 10, Stafford Park, Telford TF3 3AD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous prior approval was granted.
 - The appeal is made by Mr N Patel of Kalinga Holdings LTD against the decision of Telford and Wrekin Council.
 - The application Ref is TWC/2024/0405.
 - The application sought planning permission for Notification for Prior Approval for a proposed change of use of a building from office use (Class B1(a) to 80no. apartments (Class C3) – Phase 1 without complying with a condition attached to planning permission Ref TWC/2017/0496, dated 10 August 2017.
 - The condition in dispute is No 5 which states that: The development hereby approved shall be carried out strictly in accordance with the conclusions and recommendations set out in the Acoustic Consultancy Report ref. 4253-FAC-ATN-1 dated 2nd March 2017, unless otherwise agreed in writing with the Local Planning Authority. The mitigation shall include the provision of secondary glazing in MP3 and MP4 facades which shall include trickle vents as specified in the report.
 - The reason given for the condition is: In order to protect the amenities of future occupants of the residential units.
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Decisions

1. Appeal A and Appeal B are dismissed.

Procedural Matter

2. Appeal A and Appeal B relate to the same building and the same appellant, and the two prior approvals (the 2017 prior approvals)¹ were granted for separate parts of the appeal building. The evidence submitted with both appeals covers matters relevant to the appeal building known as Sapphire House. The condition in dispute for both appeals replicate each other and the matters in dispute are similar. Whilst I have considered each proposal on its individual merits, to avoid duplication I have dealt with the two schemes together.

Background and Main Issue

3. This appeal is pursuant to applications made under section 73 (s73) of the Town and Country Planning Act 1990 (the Act). S73 allows for applications to be made for planning permission for the development of land without complying with the conditions to which a previous planning permission was granted.
4. Planning permission was granted by article 3(1) of Class O, Schedule 2, Part 3 of the General Permitted Development (England) Order 2015 (or any order revoking or re-enacting that order with or without modification) (GPDO) for the change of use of a building from B1(a) to C3². The permissions were granted subject to conditions, including a condition that the development must be completed within a period of 3 years starting with the prior approval date. Prior approval was granted in 2017 for both cases and as such it is now more than 3 years since the prior approval dates. It is not disputed that the building has changed use without compliance with condition 5 of the 2017 prior approvals and this was evident at my site visit.
5. The Council state that because the appellant has not complied with the conditions that the two schemes have not been completed within a period of 3 years starting with the prior approval date. However, it has not been shown that each condition 5 would go to the heart of the permissions such that failure to comply with them would not extinguish the planning permission granted by the GPDO. There is no evidence before me to indicate that the other works to convert the building were not carried out before the expiry of the 3 years from the date of the grant of the 2017 prior approvals and complied with all other conditions.
6. The appellant seeks to carry out the approved change of use without complying with condition 5 attached to each of the 2017 prior approvals so as to not install secondary glazing with trickle vents. Any success in this appeal would not mean that the two 2017 prior approvals would be varied. It would mean that a full planning permission would be granted under s73 of the Act for the change of use of a building from office use to 51no. apartments and the change of use of a building from office use to 80no. apartments subject to fewer or varied conditions which were previously imposed.
7. The Planning Practice Guidance (PPG) is clear that Councils cannot consider any matter beyond those specified in the GPDO when determining prior approval applications. However, given that the disputed conditions are now for consideration in the context of a s73 appeal, I therefore need to decide whether express planning permission for the change of use without compliance with

¹ Application References: TWC/2017/0198 & TWC2017/0496

² The Town and Country Planning (Use Classes) Order 1987

condition 5 for the 2017 prior approvals, it follows that I must consider the appeal on its merits, with regard to the development plan.

8. Thus, while I should only consider the question of the conditions subject to which permission should be granted, I am not bound to consider the disputed conditions strictly in terms of the 'prior approval matters' set out under what was Class O and is now Class MA of the GPDO. This means that impacts of noise from sources other than from commercial premises on the intended occupiers of the development can be taken into consideration. The reason given for the conditions was to protect the amenities of the future occupants of the residential units and in the context of this appeal, this covers a multitude of matters which could include ventilation and thermal efficiency which was identified by the Council.
9. Taking into consideration the above, the main issue relevant to this appeal is whether condition no 5 of the 2017 prior approvals is necessary having regard to the living conditions of the occupiers of Sapphire House with particular regard to noise and disturbance and linked to this ventilation and thermal efficiency insofar as it relates to the health and well-being of the occupiers.

Reasons

10. Condition 5 of the 2017 prior approvals requires secondary glazing in MP3 and MP4 façades which shall include trickle vents. The reason for the conditions was to protect the amenities of the future occupants of the residential units. Sapphire House is a five-storey building that was previously an office building and is now in residential use. The appeal building is located in Stafford Park which is a Strategic Employment Area within Telford and is situated next to the M54 motorway. The uses in the surrounding area are typically commercial and industrial. The 2017 prior approval schemes were supported by a Noise Impact Assessment (2017 NIA) which recommended the measures within the conditions in dispute to mitigate for the recorded noise levels at the two façades referred to in the disputed condition.
11. Given that this appeal must be determined in accordance with the development plan, policies SP 1, SP 4, BE 1 and BE 2 of the Telford and Wrekin Local Plan 2011-2031 (LP) have been identified as relevant by the Council.
12. The two apartments I visited in the appeal building had a shared living and dining room and separate bedrooms and each room had its own windows. Table 4 of BS 8233:2014 identifies that for steady external noise sources, it is desirable that the internal ambient noise level does not exceed the guidance in the table.
13. Note 7 of BS 8233:2014 identifies that where development is considered necessary or desirable, despite external noise levels above World Health Organization guidelines, the internal target levels may be relaxed by up to 5 dB and reasonable internal conditions still achieved.
14. If it was accepted that the development was necessary or desirable it would not mean that internal target levels have to be relaxed, only that they may be relaxed. Based on the evidence before me it is has not been robustly justified that the internal target levels should be relaxed by 5 dB as suggested, or given that mitigation is available, that they need to be in this case.

15. A new Noise Impact Assessment (2024 NIA) was prepared by the appellant in support of the application identifying the recorded internal ambient noise levels within the building and at the two façades over several days.
16. The rooms where the recordings were taken were identified as kitchen/living rooms. On the eastern façade, referred to as MP4 in the conditions in dispute, while the dB levels were generally within the desirable ambient noise levels for dining rooms during the daytime, they have been identified as kitchen and living rooms. There is some dispute over the adjustment of values to account for soft furnishings. However, even if I were to accept those values, they would still exceed the recommended (non-relaxed) levels for living rooms and for all types of rooms at night. Whilst measurements may have been taken within dual aspect apartments, there is no substantive evidence to support the case that the ambient noise levels in the other apartments on the eastern façade would achieve the desirable ambient noise levels.
17. On the northern façade, referred to as MP3 in the conditions in dispute, the dB levels did not exceed the desirable ambient noise levels for bedrooms, living rooms or dining rooms for all daytime and nighttime recordings. However, Note 5 of BS 8233:2014 states that if relying on closed windows to meet the guide values, there needs to be appropriate alternative ventilation that does not compromise the façade insulation or the resulting noise level. If applicable, any room should have adequate ventilation (e.g. trickle ventilators should be open) during assessment. The 2024 NIA does not identify whether there was appropriate ventilation during the recordings and because of this the results may be reliant on the windows being closed to meet the guidelines. As such, the results for the northern façade may not necessarily meet the guide values for desirable ambient noise levels.
18. Planning permission was granted on a neighbouring site for the change of use from vacant commercial car park to allow storage and maintenance of commercial vehicles (Use Class B8)³. Approved as part of this permission was a management plan which set out the hours the business would operate and what work would be undertaken on site. Whilst this change in circumstances may result in less noise being generated from a neighbouring commercial operation there is no technical evidence that this would reduce the desirable ambient noise levels in the appeal building to comply with those set out in Table 4 of BS 8233:2014.
19. Consequently, taking into consideration the survey results, the desirable ambient noise levels would exceed the guideline values in Table 4 of BS 8233:2014 in the eastern façade during the daytime and nighttime. It is not clear that the desirable ambient noise levels are achievable in the apartments on the northern façade. As a result, the occupiers are exposed to noise exceeding reasonable levels. This creates an unacceptable living environment for the occupiers who are unable to enjoy their home without harmful disruption throughout the day and this would harm their living conditions. Accordingly, the conclusions and recommendations within the 2017 NIA as required by the conditions in dispute are necessary to make the development acceptable in planning terms.
20. The Council has provided photographs inside some of the apartments within the appeal building which show mould growth around the windows. There is nothing

³ TWC/2024/0271

before me which would lead me to conclude that these photographs were not taken within the appeal building.

21. Mould around the windows can often be an issue caused due to insufficient ventilation and thermal efficiency. Based on the apartments I was able to visit the windows were openable, and if left open this can often address issues with mould. As a secondary effect the secondary glazing would likely improve the thermal efficiency of the apartments. The conditions in dispute require trickle vents to be installed within the secondary glazing, rather than changes to the existing windows or ventilation provision. As such, the condition would not necessarily address existing concerns with mould in the apartments as the original windows would remain without trickle vents.
22. Thus, it appears that the conditions required the trickle vents to be acoustically rated as specified in the evidence at that time to address noise issues, but it has not been shown that their provision would have addressed any existing ventilation problem. Furthermore, it has not been robustly demonstrated that the mould concerns relate solely to the two façades within the disputed conditions. Therefore, it is not evident that the conditions are necessary in the interest of ventilation and thermal efficiency concerning the health and well-being of the occupiers.
23. However, for the reasons given above, the conditions are necessary to protect the living conditions of the occupiers of the residential units for both Appeal A and B with regard to noise and disturbance. Therefore, the proposals would conflict with Policies SP 1, SP 4, BE 1 and BE 2 of the LP insofar as they expect developments to produce an environment which facilitates and encourages healthy living, amongst other matters.

Planning Balance and Conclusion

24. If permission was granted without the conditions in dispute, it would allow the continued occupation of the apartments without further work but given that compliance would not stop or reduce the number of units, that would only be of limited weight in favour of the scheme.
25. The proposals would cause harm to the living conditions of the occupiers of the Sapphire House, and this would lead to a conflict with the relevant policies in the development plan. As a result, the proposals conflict with the development plan, and I attach significant weight to the harms associated with these schemes. The benefits of the proposals must be weighed against the harms and in this instance, they would not outweigh the significant harm I have found.
26. For the reasons I have given the conditions in dispute for both appeals are necessary and if new permissions were granted without the conditions this would lead to harm as identified above. As a result, the development would conflict with the development plan and the material considerations do not indicate that the appeals should be determined other than in accordance with it. Therefore, I conclude, that Appeal A and Appeal B should be dismissed.

G Sibley

INSPECTOR