
Appeal Decision

Site visit made on 23 July 2025

by H Faulkner BSc (Hons) MSc PGCE MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 September 2025

Appeal Ref: APP/D1265/W/25/3360901

38 Maiden Street, Weymouth DT4 8BA

- 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 Mr Ben Andrews (DJAR Planning) against the decision of Dorset Council.
 - The application Ref is P/FUL/2023/07423.
 - The development proposed is for alterations and conversion to 2 houses and 2 maisonettes.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Mr Ben Andrews (DJAR Planning) against Dorset Council. This application is the subject of a separate decision.

Main Issue

3. The main issue is whether the scheme would provide acceptable living conditions for future occupiers, with particular regard to noise and disturbance, and the provision of refuse storage.

Reasons

4. The appeal site is located within the town centre of Weymouth within the Weymouth Town Centre Conservation Area (CA). It adjoins a nightclub as well as being close to other commercial uses providing services for both the day and night time economy.
5. The adjacent nightclub is currently licensed to operate between 9am to 5am throughout the week. The license includes performance of live music, playing of music, performance of dance and the supply of alcohol on and off the premises.
6. In assessing the noise and disturbance issues in relation to this proposal both the effect of noise from the nightclub itself, for example from music, and also the effects of customers of the nightclub and other persons in the area need to be considered.
7. An acoustic report was provided with the application. The report describes the current noise conditions and states that due to the compromised condition of the building accurate assessment of sound transition paths was impossible. However, it identified that structure borne sound transmission is present throughout the building and noise could be heard and felt by putting an ear against the wall. The report stated that sound was clearly audible in the party wall adjoining the club at ground, first and second floors. Furthermore, that music breakout noise dominates the

noise climate through the night until closing which was reported as being around 3am or 4am.

8. To mitigate noise effects, the proposed dwellings have been designed so that more sensitive living areas are located further from the sources of the noise. Alongside this, measures such as fixed-closed windows and mechanical ventilation are required. The report concludes that calculations indicate that adequate internal living conditions can be met through the noise insulation scheme proposed, if care is taken to install every system correctly.
9. The conclusion of the report raises some doubt as to whether suitable mitigation is practically possible and the situation appears finely balanced with there being scope for the measures not being sufficient if there are any installation issues. The Council's Environmental Protection Team (EPT) whilst accepting the findings of the report also raise this as a concern, referencing that it is possible that there are structural peculiarities with the very old adjoining buildings which may result in unexpected flanking transmission of noise.
10. To address this concern the EPT recommends a post development noise report is provided before the property is used for residential purposes and that the proposed dwellings should not be used until this has been agreed. However, a condition to this effect may prevent use of the implemented dwellings in a situation where noise levels within them are unacceptable. This would create uncertainty and be unduly restrictive, effectively nullifying the benefit of the permission. As such (and notwithstanding the appellant's agreement to such a condition), it would not comply with the test of reasonableness set out in paragraph 57 of the National Planning Policy Framework and therefore it should not be imposed. Moreover, if the acceptability of the scheme is reliant on such a condition, permission should instead be refused.
11. Details on the proposed plans, for example in relation to windows and doors, do not directly correlate with the specification within the noise report. To meet the required noise levels, measures such as ventilation ducting or window specifications, which differ from the plans, may be required and such changes would need further consideration given the sensitive nature of the surrounding conservation area. This further adds to the uncertainty surrounding the proposed measures.
12. In light of the suggested condition not being reasonable and doubts in respect of whether noise mitigation measures can be fully implemented it is likely that future residents would be disturbed by noise and vibrations from the nightclub which would be detrimental to their living conditions.
13. With regards to noise from outside of the club, the noise report details that patrons start to arrive around 11pm with queuing outside of the premises and congregating around the entrance, which is close to the appeal site, throughout the night. The noise report details that patron noise from people queuing and using the entrance as a smoking area is audible on the east side of the appeal building.
14. The design of the proposal is such that living rooms have been located with north facing or dual aspect, north and east, where the noise levels are lower. Rooms that the noise report considers to be non-noise sensitive (kitchens, bathrooms and stairwells) overlook the courtyard where noise levels are higher. However, it acknowledges that these will also require high attenuation acoustic glazing to minimise nightclub noise along with other attenuation measures.

15. Noise from late night activity could affect the future occupiers, particularly the occupants of the ground floor. The noise report recommends fixed shut windows although this detail is not reflected on the drawings. Mechanical ventilation is proposed, although this would not be an acceptable situation for all windows and I am not satisfied this would provide a suitable source of ventilation and would have a harmful effect on living conditions as a result. The noise report states that such ventilation would ideally be vented away from the source of the noise and it is unclear from the information provided how this would be achieved.
16. Given the proximity of the nightclub and other night time uses, and the hours of operation of the night club taken together with the doubts in respect of the noise mitigation I have significant concerns the future occupants of the proposed dwellings may be disturbed by the night time activity. Even if it were possible for the ingress of noise into the ground floor dwellings to be limited there would still be a level of activity throughout the night directly adjacent to the living room windows. Church Passage may not be the most attractive route for night time use but it could still be used by those enjoying the late-night facilities in the area.
17. I accept that given the town centre location future occupiers would expect a level of night time activity and I acknowledge that there are other residential uses in the area. However, I have not been made aware of any other residential uses at ground floor level which are in such proximity to the nightclub.
18. I am also mindful of paragraph 200 of the Framework which seeks to ensure that existing businesses and community facilities do not have unreasonable restrictions placed on them as a result of development granted after they were established. It has been highlighted by the EPT that they would have a statutory duty to investigate allegations of noise nuisance. Given the proximity of the use and the issues raised above, this could be a more than theoretical possibility.
19. Policy ENV16 of the West Dorset, Weymouth and Portland Local Plan (the Local Plan) states that development which is sensitive to noise will not be permitted near existing sources where it would adversely affect future occupiers. For the reasons given above the proposal would conflict with this policy as there is uncertainty that future occupants would be protected from noise from the nightclub as well as disturbance from people in the area during late night hours.
20. Moving on to the matter of refuse storage, the building is positioned such that it is hard up to the pavement on two sides and as a result there is limited external space available for the storage of refuse.
21. Unit 1 is proposed to have the refuse stored internally in a store adjacent to the entrance. For Unit 2 the store is shown at ground floor adjacent to the stairwell with the living accommodation. The store for Unit 3 would be in a small external area accessed from the proposed kitchen with refuse being moved through the property for collection. The storage area for Unit 4 would be within the cellar.
22. The arrangements proposed do not represent an acceptable situation for future occupiers. Refuse being stored internally for a period of at least two weeks or needing to be carried through living areas does not create a good quality living environment and does not minimise the impacts on amenity as required by Policy ENV16 of the Local Plan along with paragraph 135(f) of the Framework which requires that developments create spaces which promote health and well-being with a high standard of amenity for existing and future occupiers.

23. With regards to paragraph 135(f) of the Framework, whilst footnote 51 refers to technical space standards this does not preclude other amenity aspects from consideration.
24. I conclude the scheme would not provide acceptable living conditions for future occupiers, with particular regard to noise and disturbance, or the provision of refuse storage. As such, it would be contrary to Policy ENV16 of the Local Plan and paragraph 135 of the Framework

Other Matters

25. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the conservation area. The area of the CA surrounding the site is predominately commercial with a mix of building sizes and styles, with narrow streets and tightly arranged buildings. Whilst the buildings vary in terms of architectural style and scale, the historic integrity, architectural unity, and generally well-preserved quality of the CA contributes positively to the character and appearance of the CA as a whole and thereby to its significance as a designated heritage asset.
26. The Council concluded that the proposed works would both preserve and enhance the character of the conservation area with details to be conditioned of windows and doors. Without full details, of the doors and windows, which would likely be determined to some extent by the noise requirements, I conclude that the proposed works would at best preserve the appearance of the building and the CA. Nevertheless, this lack of harm weighs neutrally and does not amount to a consideration in support of the appeal or alter my overall conclusions on the main issue.
27. The site is close to the Grade I listed St Mary's Church. Mindful of the statutory duty set out in s66(1) of the Act, I have had special regard to the desirability of preserving its setting. The church is tightly surrounded by buildings with only small open areas either side. The surrounding historic buildings and the street pattern contribute to its significance. The appeal site is directly adjacent to the church, however the proposal predominantly relates to internal changes to the building, although some external works are proposed. Given the location and extent of the proposed development, 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.
28. I note the support for the proposal and the reported issues with the operation of the previous use on the site and antisocial behaviour. Whilst the removal of a commercial premises may have some benefits this appeal also needs to consider the suitability of a new residential use within the building and therefore the loss of the previous use has limited weight in this regard.
29. I acknowledge that there are licensing and other regimes to manage some aspects of noise and disturbance. However, these would not preclude the proposal from being affected by external noise and could lead to complaints from future occupants under separate legislation as referenced above.
30. The site is located close to the Chesil and Fleet Special Protection Area. Regulation 63(1) of the Conservation of Habitats and Species Regulations 2017

indicates that the requirement for an Appropriate Assessment is only necessary where the competent authority is minded to give consent for the proposed development. Therefore, given my overall conclusion on the main issue, it is not necessary for me to consider this matter in any further detail.

Planning Balance and Conclusion

31. The proposed creation of four additional units in a sustainable location and would support the Framework's objective of significantly boosting the supply of homes. The benefits of making use of an empty building and subsequent renovations are noted. However, the number of new homes proposed is modest and the benefit does not outweigh the harm I have identified.
32. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. Therefore, the appeal is dismissed.

H Faulkner

INSPECTOR