



## Appeal Decision

Site visit made on 9 November 2020

**by E Brownless BA (Hons) Solicitor (non-practising)**

an Inspector appointed by the Secretary of State

**Decision date: Wednesday, 17 March 2021**

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**Appeal Ref: APP/C1950/W/20/3251057**

**Everest House, Sopers Road, Cuffley, Potters Bar EN6 4SG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development)(England) Order 2015.
  - The appeal is made by Cuffley Properties Ltd against the decision of Welwyn Hatfield Borough Council.
  - The application Ref: 6/2020/0447/PN11, dated 14 February 2020, was refused by notice dated 9 April 2020.
  - The development proposed is a change of use from office to residential to create No.45 residential units.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The application was made under Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(GPDO), in which prior approval for the change of use of a building from office use (Class B1(a)) to a dwellinghouse (Class C3) was sought.
3. This is subject to a number of circumstances where such development is not permitted, listed under paragraph O.1, and to conditions in paragraph O.2 setting out the circumstances when an application to the local planning authority for a determination as to whether the prior approval of the authority will be required.
4. During the Council's determination of the application, they concluded that the proposal would meet the requirements of paragraph O.1 and would therefore amount to permitted development. The Council proceeded to consider whether prior approval would be required regarding issues raised under paragraph O.2. The Council concluded prior approval was required and refused the proposal under part (d) impacts of noise from commercial premises on the intended occupiers of the development.
5. The Council have not raised concerns with regards to any other matters stated within paragraph O.2, as to matters that could require the Council's prior approval. I have therefore taken this to mean that the Council concluded that prior approval would not be required for those matters.
6. The results of the 2020 Housing Delivery Test (HDT) were published on the 19 January 2021. The results show that Welwyn Hatfield delivered 63% of its housing requirement over the preceding 3 years. The main parties have been afforded the opportunity to comment on the implications of these results for

this appeal and, where provided, I have had regard to their comments in my decision.

### **Main Issue**

7. Having regard to the above, I therefore consider the main issue to be whether the proposal would be permitted development under Class O, subject to the prior approval of certain matters, in particular, impacts of noise from commercial premises on the intended occupiers of the development.

### **Reasons**

8. The appeal property comprises a three-storey office building located on Sopers Road, within a mixed-use area. Presently, there are a number of commercial properties on the opposite side of Sopers Road and to the south of the appeal site together with a warehouse adjoining its southern boundary. Dwellings are located to the north and, to the west beyond the commercial premises of Sopers Road. Local shops, services and amenities are positioned along Station Road.
9. Although my site visit provided only a snapshot of conditions, I observed a range of noise in the area surrounding the appeal building including noise from banging, crashing and the operation of machinery. In addition, there was engine noise from vehicles using Soper Road, warning noise from reversing vehicles and persons shouting. In my view, the type and volume of noise was commensurate with noise typically experienced within an industrial and commercial area and to my mind, it did not appear to be a suitable environment for residential development.
10. Whilst my attention has been drawn to an existing residential development to the north of the appeal site, I observed it to be set back from Sopers Road and it is largely screened from the commercial premises by the appeal building. It is not therefore comparable to the appeal building in terms of its exposure to noise and I have therefore considered the appeal scheme before me on its individual planning merits.
11. A Noise Impact Assessment<sup>1</sup>(NIA1) accompanied the original application. An Acoustic Noise Survey<sup>2</sup>(NIA2) was undertaken for the purposes of this appeal. Both the NIA1 and NIA2 gave consideration of the original plans and a revised layout. Further to the NIA1 and NIA2, the Council commissioned its own review<sup>3</sup>. I note that there are numerous areas of dispute between the main parties. These can be briefly summarised as, the noise impact assessment having failed to properly assess outside noise, the inclusion of false assumptions and the incorrect application of guidance.
12. With regard to the application of guidance, I note that the appellant concedes that BS8233 levels apply to steady state continuous noise and that noise of an industrial nature does not fall within this category. Nonetheless, the appellant's calculations have been carried out in line with the method detailed in BS8233.
13. However, setting aside these areas of dispute for a moment, even if I were minded to accept the findings of NIA1 and NIA2, the results demonstrate that

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<sup>1</sup> KR Associates, dated 3<sup>rd</sup> February 2020 – version 1.0

<sup>2</sup> RBA Acoustics, dated 15 April 2020 - reference 10224.RP01.EBF.1

<sup>3</sup> MAS Environmental Ltd, dated 10 August 2020

in order to achieve the target levels for the internal rooms, the proposed dwellings will require secondary glazing and a system of mechanical ventilation and heat recovery. Crucially, in order for the acoustic mitigation to be effective there must be a reliance upon windows being kept closed. The acceptability of this matter is disputed by the Council.

14. In my view, where a window is capable of being opened, occupiers of the proposed dwellings are likely to wish to do so, particularly during periods of warmer weather. Consequently, when a window is open it would compromise the effectiveness of the proposed mitigation measures. I note that the appellant has provided a revised internal layout that would also introduce doors to separate kitchen areas from living spaces. Nevertheless, taking account of the original scheme and the revised layout, the evidence demonstrates that internal noise levels would exceed the target levels by some way when windows were to be open. This would be particularly prevalent within bedrooms and living rooms along the southern and southwest facades. My attention has also been drawn to the Acoustics, Ventilation and Overheating Residential Design Guide. Again, noting the Council's view on the inappropriateness of this guidance, the appellant's risk assessment identified a 'red' or high risk at night with open windows.
15. For future occupants to experience unacceptable levels of noise through open windows or be reliant upon keeping windows and doors closed and thus living and sleeping within sealed rooms and dependant on an alternative means of ventilation would not, to my mind, provide satisfactory living conditions for future occupiers. In this respect the proposal would fail to provide a high standard of amenity for future users as envisaged by paragraph 127 of the National Planning Policy Framework (the Framework). Similarly, it would conflict with paragraph 180 of the Framework insofar as planning decisions should avoid noise giving rise to significant adverse impacts on health and the quality of life.
16. There is no restriction on the hours of operation of nearby commercial uses. The evidence before me suggests that they predominantly operate during daytime hours, however, in the absence of any control, these uses could occur during unsociable hours. There is little evidence before me to substantiate the appellant's view that noise from different premises would rarely occur simultaneously. Moreover, given that neighbouring commercial premises tend to operate during daytime hours, this increases the likelihood of noise from different commercial uses occurring at the same time.
17. Paragraph 182 of the Framework is clear that existing businesses and facilities should not have unreasonable restrictions placed upon them as a result of development permitted after they were established. By reason of the above and given the concentration of commercial premises in the area, many generating noise, I find that there is no certainty that the proposed scheme would not lead to instances of complaints of noise and nuisance from future occupiers as a result of the neighbouring land uses. Hence, I cannot be satisfied that the viability of these established businesses would not be compromised as a consequence of the appeal scheme. This matter weighs against the proposed scheme.

18. Reference is made to a number of previous appeal decisions.<sup>4</sup> However, the Planning Practice Guidance for Noise advises that the '*subjective nature of noise means that there is not a simple relationship between noise levels and the impact on those affected*'<sup>5</sup>. The circumstances of those appeals are not directly analogous with the appeal proposal and therefore I have considered the appeal before me on its individual planning merits.

19. Therefore, on the basis of the evidence before me I find that there is insufficient information to demonstrate that the appeal scheme would provide satisfactory living conditions for intended occupiers of the proposed scheme with particular regard to the impacts of noise from commercial premises.

### **Other Matters**

20. By reason of my findings above, it has not been necessary to reach findings on all the areas of dispute between the main parties as the outcome of the appeal would remain the same.

### **Conclusion**

21. For the reasons given above and having regard to all other matters raised, I conclude that the proposal is not permitted development under Schedule 2, Part 3, Class O of the GPDO, as amended.

22. Therefore, the appeal is dismissed.

*E Brownless*

INSPECTOR

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<sup>4</sup> APP/Z0116/W/19/3220741, APP/C3810/W/19/3230687 and APP/G5180/W/19/3237984

<sup>5</sup> Paragraph: 006 Reference ID: 30-006/20141224