
**APPEAL STATEMENT OF
CASE**

In respect of

**EVEREST HOUSE,
SOPERS ROAD, CUFFLEY,
POTTERS BAR, EN6 4SG**

FOR:

**APPEAL AGAINST
REFUSAL OF PRIOR
APPROVAL (REF.
6/2020/0447/PN11)**

On behalf of

**CUFFLEY PROPERTIES
LTD**

Ref: JF/0222

ARPIL 2020

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1.0 INTRODUCTION

1.1. This statement has been prepared on behalf of Cuffley Properties Ltd ('The Appellant') in support of their appeal against Welwyn Hatfield Borough Council's ('The Council') decision to refuse prior approval (ref. 6/2020/0447/PN11) at Everest House, Sopers Road ('The Site'). The decision notice and delegated report are attached at **Appendix 1**.

1.2. Prior approval ref. 6/2020/0447/PN11 was reused on 9th April 2020 for:

'Prior approval for the change of use from offices (B1(a)) to dwellinghouses (C3) to create 45 residential dwellings.'

1.3. Prior approval was refused on the following ground:

'Insufficient information has been provided in relation to the impact of noise from adjacent commercial premises on the occupiers of the proposed dwellings. Schedule 2, Part 3, Class O, Paragraph (3)(d) of the Town and Country Planning (General Permitted Development) Order 2016 (or as amended) states that the local planning authority may refuse an application where, in the opinion of the authority the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with, limitations or restrictions specified in this Part as being applicable to the development in question. As such, the prior approval is refused.'

1.4. The application submission is at **Appendix 2**.

1.5. This Statement of Case sets out a description and context of the site at Section 2, planning history and evolution of the appeal scheme at Section 3, relevant legislation framework at Section 4, planning assessment at Sections 5 and conclusions at Section 6.

1.6. This Statement should be read in conjunction with the submitted Noise Impact Assessment by KR Associates and the Planning Appeal Acoustic Report by RBA Acoustics. A second and different qualified noise consultant, RBA Acoustics, was chosen for the appeal to assess the KR Associates report and ensure it is correct and valid.

2.0 CONTEXT OF APPEAL SITE

Site Location

- 2.1. The site is located on the east side of Sopers Road and is within 2-minute (approximately 150m) walking distance to Cuffley train and bus stations to the north of the site. Cuffley train station has regular services towards Stevenage and central London including Moorgate and Kings Cross. The bus stop serves bus number 242, 380 and 308 which provide services towards Potters Bar, Hertford and Waltham Cross.

Site Description

- 2.2. The site comprises a three-storey office building in B1(a) use class with a lower ground floor and on-site parking spaces.

Site Context

- 2.3. The wider surrounding area is predominantly residential. The immediate surrounding area comprises a mix of uses including employment and business uses to the south, residential to the north and west, and local shops, services and amenities along Station Road. The nearest commercial use is the warehouse adjacent to the site (to the south), which accommodates a self-storage facility. Details of the commercial neighbours are set out in the KR Associates Noise Assessment,

Heritage and Environmental Considerations

- 2.4. The subject property is not statutorily or locally listed nor is it within a conservation area. The site falls within an area of Flood Zone 1.

Proposed Development (appeal scheme)

- 2.5. The prior approval application is for the change of use from B1(a) offices to C3 residential to create no.45 residential units.

3.0 PLANNING HISTORY AND EVOLUTION OF SCHEME

Planning history

3.1. Table 3.1 below sets out the relevant planning history at the site.

| Reference | Description | Decision |
|------------------|---|---|
| 6/2020/0447/PN11 | Prior approval for the change of use from offices (B1(a)) to dwellinghouses (C3) to create 45 residential dwellings | Refused 09/04/2020 |
| 6/2018/3052/PN11 | Prior approval for the change of use from offices (B1(a)) to dwellinghouses (C3) to create 45 residential dwellings | Withdrawn 23/01/2019 |
| 6/2016/2546/ADV | Replacement of existing company's signage with a new internally illuminated signs on the west and north elevations and one non-illuminated sign on east elevation | Granted 17/05/2017 |
| S6/2015/1119/OR | Prior approval for the change of use from Class B1 (Office) to Class C3 (Dwellinghouses) | Prior Approval Not Required 15/07/2015 |
| S6/1999/0016/FP | Erection of covered glass walkway | Withdrawn 05/05/1999 |
| S6/1982/0303 | Site for new office building with associated car park | Refused. Appeal dismissed 24/05/1983. |

| | | |
|---------------|--------------------------|-----------------------|
| S6/1977/0256/ | Site for office premises | Granted 23/03/1978 |
|---------------|--------------------------|-----------------------|

Table 3.1 Relevant planning history

Evolution of proposed scheme

- 3.2. Prior approval was granted (not required) on 15/07/2015 (ref. S6/2015/1119/OR) for the change of use from Class B1 office to C3 dwellinghouses. The approved scheme is the exact same as the appeal scheme, providing no.45 residential units. The approved plans and associated decision notice and delegated report are attached at **Appendix 3**.
- 3.3. The 2015 prior approval expired as the development was not completed within a period of 3 years, as required by Class O of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order (2016 Amendment). As such, a new prior approval application was submitted in 2018 to 're-new' the prior approval (ref. 6/2018/3052/PN11). The proposal remained the same as it was for the change of use from office to residential to create no.45 residential units.
- 3.4. The 2018 prior approval application was subsequently withdrawn due to unresolved noise issues. Despite the efforts made by the applicant to address the concerns raised, the Council remained their position that there would be adverse noise impacts on future residents of the development. The formal response from the Environmental Health Officer (EHO) and the subsequent correspondence between the EHO and the applicant/Appellant's noise consultant is attached at **Appendix 4**.
- 3.5. Following the withdrawal of prior approval application ref. 6/2018/3052/PN11, the subject prior approval application was submitted (ref. 6/2020/0447/PN11). A new Noise Impact Assessment was issued by KR Associates to support the application, which took into account the issues raised previously by the Council and requirements advised by the EHO in January 2020, prior to the submission of the subject application. The EHO's advice is attached at **Appendix 5**.
- 3.6. During the determination period of the latest prior approval application, the Council raised concerns over the noise impacts from the surrounding commercial/industrial properties. The Council's noise comments are attached at **Appendix 6**. The Appellant's noise consultant (KR

Associates) provided a response to these noise comments (dated 01/04/2020, also attached at **Appendix 6**), stressing that the Noise Impact Assessment was carried out in great detail, which sufficiently addressed the specific issues raised by the Council.

- 3.7. To further assess and prove that there would be acceptable noise levels for future residents, the Appellant consulted another qualified noise consultant, RBA Acoustics, and received a second professional opinion on the prior approval application. RBA Acoustics agreed with the conclusions KR Associates made, that the proposed development would be acceptable in terms of noise. RBA Acoustics advised that reconfiguring the internal layout of the proposed units to have non-sensitive spaces by the west elevation of the building could further minimise potential noise impacts on future residents. In accordance with RBA Acoustics' advice, a set of revised plans was then submitted to the Council on 07/04/2020. These revised plans and email proving submission to the Council are attached at **Appendix 7**.
- 3.8. The Council did not respond to any of the above (i.e. response from KR Associates and the submitted revised plans) as demonstrated in the email correspondence attached at **Appendix 6**, and proceeded to refuse the application.

4.0 LEGISLATIVE FRAMEWORK

4.1 Class O of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order ('GPDO') grants planning permission for:

"Development consisting of a change of use of a building and any land within its curtilage from a use falling within Class B1(a)(offices) ... to a use falling within Class C3 (dwellinghouses)..."

4.2 The definition of "building" for the purposes of the GPDO includes *"any structure or erection and... includes any part of a building"*.

4.3 On 6 April 2016 the Town and Country Planning (General Permitted Development) Order was amended. These amendments included changes to Class O of Part 3 of Schedule 2 the order, requiring the application to be received by the local planning authority on or before 30th May 2019. It also entailed the impacts of noise from commercial premises on the intended occupiers of the development to be a determination as to whether prior approval will be required. As such, Paragraphs O.1 and O.2 were amended to the following:

O.1 *Development is not permitted by Class O if—*

(a) the building is on article 2(5) land and an application under paragraph O.2(1) in respect of the development is received by the local planning authority on or before 30th May 2019;

(b) the building was not used for a use falling within Class B1(a) (offices) of the Schedule to the Use Classes Order—

i. on 29th May 2013, or

ii. in the case of a building which was in use before that date but was not in use on that date, when it was last in use;

(c) the site is, or forms part of, a safety hazard area;

(d) the site is, or forms part of, a military explosives storage area;

(e) the building is a listed building or is within the curtilage of a listed building; or

(f) the site is, or contains, a scheduled monument.

O.2.—(1) *Development under Class O is permitted subject to the condition that before beginning the development, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to—*

(a) transport and highways impacts of the development,

(b) contamination risks on the site,

(c) flooding risks on the site, and

(d) impacts of noise from commercial premises on the intended occupiers of the development, and the provisions of paragraph W (prior approval) apply in relation to that application.

and the provisions of paragraph W (prior approval) apply in relation to that application.

(2) Development under Class O is permitted subject to the condition that it must be completed within a period of 3 years starting with the prior approval date.

4.4 The 2016 amendment to the GPDO inserted the following after paragraph O.2:

Interpretation of Class O

O.3. *For the purposes of Class O, “commercial premises” means any premises normally used for the purpose of any commercial or industrial undertaking which existed on the date of application under paragraph O.2(1), and includes any premises licensed under the Licensing Act 2003(1) or any other place of public entertainment.*

4.5 Article 7(2) of the GPDO 2016 amendment further states that:

With effect from 31st May 2019 omit—

(i) article 2(5);

(ii) Part 3 of Schedule 1 (article 2(5) land); and

(iii) paragraph O.1(a) of Part 3 of Schedule 2 (as substituted by this Order).

5.0 PLANNING ASSESSMENT

- 5.1. This appeal is submitted on the basis that the proposed change of use is permitted by Class O of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order (2016 Amendment) because, and with reference to the above criteria of Class O, paragraph O.1:
- a. Paragraph O.1(a) of Part 3 of Schedule 2 is no longer a criterion as it has been omitted since 31st May 2019, as outlined in Article 7(2) of the GPDO 2016 amendment;
 - b. The building is currently in B1(a) (offices) use and was in this use on 29th May 2013;
 - c. The site is not and does not form part of a safety hazard area;
 - d. The site is not and does not form part of a military explosives storage area;
 - e. The building is not listed or within the curtilage of a listed building; and
 - f. The site does not contain a scheduled monument.
- 5.2. In terms of the criteria set out in paragraph O.2 of Class O, we provide the following assessment of the appeal scheme.

Transport

- 5.3. As set out in the submitted planning cover letter prepared by Collective Planning, the site is in a sustainable location and benefits from being within walking distance to various public transport facilities. The site is located approximately 150m from Cuffley train station and bus station. As outlined in paragraph 2.1 of this Statement, these provide regular service to Stevenage, central London (including Moorgate and Kings Cross), Potters Bar, Hertford and Waltham Cross.
- 5.4. Within the immediate vicinity of the site are local shops, restaurants and cafes, services and amenities, including Cuffley Youth and Community Centre and Cuffley Hall. These are located along/off Station Road. Other nearby amenities and community facilities include the Plough public house, Life Church Cuffley, St Andrews of Cuffley C of E Church and St Martin de Porres Roman Catholic Church. The site is therefore at a sustainable location with good public transport accessibility as well as excellent accessibility to local shops, services and amenities. As such, it will not result in adverse transport and highway impacts.
- 5.5. The proposed development comprises no.43 car parking spaces at ground floor level and provides cycle parking spaces at basement level to further mitigate any possible transport and highway impacts. Such provisions will be sufficient to meet future residents' needs.

- 5.6. As outlined in the officer's report for the prior approval ref. S6/2015/1119/OR (attached at **Appendix 3**), the Highway Authority (Hertfordshire County Council, Transport Programs and Strategy) had no objections to the scheme proposed in 2015, which is the same as the current appeal scheme. The Highway Authority noted that the proposed residential use will likely give result in a lower number of vehicular trips than a similar-sized office use. As such, the proposal will not lead to adverse highway impacts. The response from the Highway Authority to the subject application dated 6th March 2020 (enclosed in **Appendix 8**) states that their comments provided to the previous application remain unchanged and therefore, have no objections to the latest proposed scheme (ref. 6/2020/0447/PN11).
- 5.7. Transport and highway impacts are not a reason for refusal and the proposal is therefore considered acceptable in this respect.
- 5.8. In light of the above, the proposal satisfies paragraph O.2(1)(a) of Class O of Part 3 of Schedule 2 of the GPDO (amendment) 2016.

Contamination

- 5.9. As set out in the planning cover letter, the proposal will not result in any detrimental contamination impacts as the proposed change of use does not include any groundworks. The Environmental Health Officer raised no concerns over contaminated land (**Appendix 6**), which further confirms that there will not be any contamination risks on the site. Contamination risks have not been raised as a reason for refusal. The proposal therefore meets the criterion set out in paragraph O.2(1)(b) of Class O of Part 3 of Schedule 2 of the GPDO (amendment) 2016.

Flood Risk

- 5.10. The site is located within an area of Flood Zone 1, which indicates that there are low risks of flooding on the site. Flood risk is not a reason for refusal. The proposed change of use is therefore in compliance with the legislation set out in paragraph O.2(1)(c) of Class O of the GPDO (amendment) 2016.

Noise Impacts

- 5.11. With reference to the decision notice (ref. 6/2020/0447/PN11), the prior approval application was refused as *'insufficient information has been provided in relation to the impact of noise'* to enable the LPA to establish whether the development complies with paragraph O.2(1)(c) of Class O of the GPDO (amendment) 2016. The Appellant disagrees with this.

- 5.12. A comprehensive Noise Impact Assessment prepared by KR Associates was submitted as part of the original application (hereafter referred to 'KRA's Assessment'). The Assessment was carried out to provide further details in order to address the EHO's comments on application ref. 6/2018/3052/PN11. The Assessment also takes into consideration the follow-up advice from the EHO dated 27 January 2020 (**Appendix 4 and 5**). To provide further information on noise, a Planning Appeal Acoustic Report (Noise Appeal Statement) prepared by RBA Acoustics also accompanies this appeal case. This provides a re-assessment of the proposal and a second professional opinion that the proposed scheme is acceptable in terms of noise.
- 5.13. The site is located within a mixed use area, as demonstrated in paragraph 2.3 of this Statement. There is an existing residential development immediately to the north of the site. These residential units have openable windows. This indicates that the co-existence of residential and commercial uses in the local area is acceptable for both residents and commercial occupiers in terms of noise, even with opened windows. On this basis, the proposed residential use is considered to be acceptable and will not be subject to unacceptable noise impacts.
- 5.14. As outlined in KRA's Assessment, the proposed change of use from office to residential will result in acceptable noise levels for future residents. It is acknowledged that there are noise-generating commercial uses in the surrounding area however, mitigation measures including secondary glazing and MVHR system will be implemented to control and reduce the noise levels to an acceptable level. As demonstrated by KRA's Assessment, the internal noise levels at the proposed residential units are calculated to be 26dB (windows closed) and 49dB (windows opened) during both day and night time, assuming the commercial activities will be in continuous operation. The internal noise level with windows closed is in compliance with the British Standards 8233:2014. This is further validated and confirmed by RBA Acoustic's Noise Appeal Statement. To ensure that adequate ventilation is provided to future residents when windows are closed, mechanical ventilation will be implemented as a mitigation measure. This approach to achieve acceptable noise levels has been considered acceptable in various appeal cases including ref. APP/Z0116/W/19/3220741 and APP/C3810/W/19/3230687 (**Appendix 9**). The internal noise levels with windows opened are also considered acceptable, as outlined below in paragraphs 5.15 - 5.18 of this Statement, KRA's Assessment and the Noise Appeal Statement by RBA Acoustics.
- 5.15. The EHO has previously raised concerns regarding the noise levels with windows open. Both the submitted Noise Impact Assessment and Noise Appeal Statement refer to the Acoustics, Ventilation and Overheating Residential Design Guide (AVO guidance), attached at **Appendix 10**. Although noise from commercial sources is outside the scope of the AVO guidance, it provides the most relevant outline guidance on the conflict between opening windows for ventilation and overheating and the associated increase in internal noise levels. Section 6.2 of KRA's Assessment provides an assessment against the AVO guidance. The risk assessment identified 'red' or high risk at night with

open windows, however KRA's Assessment concludes that the internal noise levels are acceptable with the windows closed and opened during the day and night, given that mitigation measures will be implemented and that it is very unlikely the surrounding commercial uses will operate at night.

- 5.16. The operating hours of neighbouring commercial premises are attached at **Appendix 11**, which confirms that these only operate during the day. In particular, the building adjacent to the site is occupied by a storage and removal company, with clear operating hours during daytime only. As such, the nearby commercial premises will not have an unacceptable noise impact on future resident during the day and at night, and the identified 'red' risk is negligible.
- 5.17. A similar assessment against the AVO guidance was carried out by RBA Acoustics, as outlined in Section 4.2 and Section 5 of the Noise Appeal Statement. It was found that the majority of the proposed development would have acceptable or low risk of disturbance with open windows. In minimal areas of the development (western/southwestern facades) where moderate to high risk has been identified, it is also considered acceptable given that the assessment is based on a worst-case assessment of all commercial sources operating simultaneously. In practice, this is not likely the case and as such, noise levels from commercial premises would likely be at much lower levels. This further confirms the findings of KRA's Assessment that the noise levels will be at an acceptable level for future residents in both window closed and opened scenarios.
- 5.18. Through online research, it was found that the average operating hours of the surrounding commercial uses are between 8am to 5:30pm, with the earliest operation to open at 7am and latest to close at 8pm. The operating hours are tabulated and attached at **Appendix 11**. This confirms the findings of the Noise Impact Assessment and Noise Appeal Statement that the adjacent commercial uses will not operate at night. Thus, noise levels will be lower than the calculated noise levels indicated in the two noise assessments, as the calculations were based on continuous operation from all commercial activities. Future residents will therefore enjoy acceptable noise levels at all times.
- 5.19. Whilst it is considered that the original submitted scheme would adequately achieve acceptable noise levels, following the receipt of the EHO's noise comments (dated 16 March 2020, attached at **Appendix 6**), the internal layout was revised and submitted to the LPA. The revised plans seek to address the Council's concerns. It will result in further reduction in noise levels for future residents particularly on the western façade, where it was found to have the highest noise levels as indicated in KRA's Assessment. The revised internal layout will replace the previously proposed bedrooms and living rooms by the western façade with non-sensitive spaces and introduce doors to separate kitchens from more noise sensitive living spaces. As demonstrated in the Noise Appeal Statement, this will further minimise the noise impacts on future residents. This therefore ensures that the proposal will result in acceptable noise levels.

- 5.20. Although internal layout is not a criterion set out in the GPDO (2016 amendment), as the reconfiguration of the internal layout would further minimise noise levels from commercial premises, it is considered relevant to paragraph O.2(1)(d) of Class O of Part 3 of Schedule 2 of the GPDO (amendment) 2016.
- 5.21. The conclusions of both noise assessments prepared by two separate independent qualified noise consultants demonstrate that the proposed residential use will be acceptable. Neighbouring commercial premises will not result in unacceptable noise impacts on future residents, in compliance with paragraph O.2(1)(d) of Class O of Part 3 of Schedule 2 of the GPDO (amendment) 2016. Given two separate noise assessments have been provided, it is considered that sufficient information has been provided to enable the assessment of noise impacts from adjacent commercial premises.

Relevant Appeal Decisions

- 5.22. An appeal case was allowed on 14/02/2020 at 70 Queensway, Petts Wood, Orpington BR5 1DH (ref. APP/G5180/W/19/3237984, attached at **Appendix 9**), where it has similar noise climates to the subject appeal site. In deciding the appeal, the Inspector took into account the proposed layout of the development, the proposed mitigation measures and noted that the Council have not provided any substantive evidence to dispute the findings and recommendations of the Noise Impact Assessment. Therefore, similarly, the subject appeal at Everest House should be allowed given that the proposed mitigation measures and revised internal layout of the residential units will result in acceptable noise levels, as demonstrated by the submitted Noise Impact Assessment and Noise Appeal Statement. The LPA also have not provided any evidence that opposes the conclusions found in these noise assessments.
- 5.23. With regards to the proposed mitigation scheme at Everest House to include secondary glazing and a MVHR system, the allowed appeal at Unit 3 to 4, Charnwood House (ref. APP/Z0116/W/19/3220741, attached at **Appendix 9**) is relevant. The Inspector stated that mitigation involving *'the enhancement of windows...would need to be sealed airtight with alternative methods of ventilation provided to achieve acceptable sound reduction'*. Similarly, in the allowed appeal at 4 Hawthorn Road (ref. APP/C3810/W/19/3230687, attached at **Appendix 9**), the proposed dwellings were to be *'served by adequate ventilation by mechanical means without relying on opening windows'*. The Inspector found this to be acceptable and indicated that reliance on mechanical ventilation would not be harmful to the living conditions of future occupiers. It should also be noted that similar to the scheme at Hawthorn Road, the subject appeal scheme does not rely on fixed shut windows to reduce noise. As such, the proposed mitigation measures at the subject appeal site to achieve acceptable noise reduction whilst ensuring adequate ventilation is considered acceptable.

- 5.24. The Inspectors in the appeal cases at Hawthorn Road and Charnwood House also recognised that the proposed mitigation measure to include openable windows with mechanical ventilation provided residents choice and the flexibility to respond to the environment. As such, *'residents would be able to open their windows if desired when noise is lower and still enjoy adequate ventilation by mechanical means if windows needed to be closed'*. In particular, paragraph 13 of the appeal decision at Hawthorn Road notes that whilst opening windows may increase noise impacts, it does however *'give occupiers more flexibility and ability to close (windows) to reduce the noise to appropriate levels'*. This approach to mitigate noise impacts, which is the same as that proposal at Everest House, was considered acceptable by the Inspectors.
- 5.25. As per the appeal decisions at Hawthorn Road and Charnwood House, planning conditions can be secured to ensure adequate noise mitigation measures including mechanical ventilation will be implemented.
- 5.26. The appeal decision at Charnwood House referred to another appeal scheme highlighting that the Inspector was satisfied that *'having to keep windows closed throughout the 24 hour period would be testament to "the fundamentally noisy environment of an industrial estate"'*. Residents would not need to close windows for 24 hours within the proposed residential scheme at Everest House. Given the surrounding commercial uses do not operate at night and as demonstrated in paragraphs 5.15 – 5.17 of this Statement, KRA's Assessment and the Noise Appeal Statement, opening windows would be acceptable for future residents in terms of noise impacts.
- 5.27. The appeal decisions and associated noise impact assessment for the schemes at 70 Queensway (ref. APP/G5180/W/19/3237984), 4 Hawthorn Road (ref. APP/C3810/W/19/3230687) and Unit 3 to 4, Charnwood House (ref. APP/Z0116/W/19/3220741) are attached at **Appendix 9**.

6.0 SUMMARY AND CONCLUSIONS

- 6.1. The prior approval application (ref. 6/2020/0447/PN11) which is the subject of this appeal complies with Class O of the Town and Country Planning (General Permitted Development) (England) Order (2016 Amendment) and supporting documents have been submitted to assist the Local Authority in determining the prior approval in terms of transport, contamination, flood risk and noise.
- 6.2. This Statement of Case, the Noise Impact Assessment and the Planning Appeal Acoustic Report have provided detailed and sufficient information to demonstrate that the proposed development will result in acceptable noise levels to future residents. To ensure that noise levels will comply with the appropriate standards, mitigation measures including secondary glazing and MVHR system will be implemented. The proposed internal layout of the residential units also further minimises noise impacts.
- 6.3. As such, the Council's reason for refusal is invalid as sufficient information has clearly been provided to enable the LPA to assess noise impacts in accordance with the relevant legislation outlined in the GDPO (2016 Amendment).
- 6.4. We therefore consider that this appeal should be allowed and prior approval issued for the change of use from office to residential at the site to provide no.45 residential flats.
- 6.5. The Appellant reserves its position in relation to making a costs application.