



Appeal Decision

Site visit made on 9 October 2018

by Siobhan Watson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 October 2018

Appeal Ref: APP/P4605/W/18/3201108

Site within the curtilage of African Village Restaurant and Bar (former Crown and Cushion Public House), Birchfield Road, Perry Barr, Birmingham, B20 3JE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Perry Barr Developments Ltd against the decision of Birmingham City Council.
 - The application Ref 2016/08154/PA, dated 27 September 2016, was refused by notice dated 26 October 2017.
 - The development proposed is the erection of 55 apartments, parking and associated groundworks and landscaping.
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Decision

1. The appeal is dismissed.

Main Issue

2. Whether the proposed development would provide acceptable living conditions for future occupants in respect of noise and ventilation.

Reasons

3. There is no dispute that the noise from the road and the neighbouring African Village Restaurant and Bar would require mitigation. There is also no dispute that high specification acoustic glazing coupled with mechanical ventilation would sufficiently mitigate the noise. However, the Council is of the opinion that closed windows would not provide a satisfactory residential environment.
4. The Planning Practice Guidance (PPG) advises that in the case of new residential development, consideration should be given to whether adverse internal effects can be completely removed by closing windows but goes on to say that a suitable alternative means of ventilation is likely to be necessary.¹ It also indicates that if noise exposure is above the level where it causes a material change in behaviour such as keeping windows closed for most of the time, the planning process should be used to avoid this effect occurring, by use of appropriate mitigation such as by altering the design.²
5. Therefore, the PPG does not advise that closing windows is always unacceptable. In this case the windows would be openable so could be opened at times when it is not so noisy or for purge ventilation, i.e., to aid the removal

¹ Paragraph: 006 Reference ID: 30-006-20141224

² Paragraph: 005 Reference ID: 30-005-20140306

of high concentrations of pollutants released from occasional activities such as painting and decorating or accidental releases such as smoke or water vapour. As purge ventilation is occasional, exposure to noise in these circumstances would not have an adverse effect upon living conditions.

6. I note the decisions of the Inspectors in the Aston Lane/Wellhead Lane appeal³ and the appeal at Windsor Street⁴. However, in these appeals the noise sources were from 24 hour and potentially 24 hour commercial uses whereas, in this case, the nearby commercial use is not 24 hour. Noises from neighbouring commercial uses are likely to result in emotional reactions, which might result in complaints. In this case, the commercial use is controlled by a licence so it would not be audible for some of the time. Road noise is generally more tolerable than noise from music and entertainment and therefore it is possible that residents would open their windows whilst the restaurant and bar is closed. Furthermore, whilst not a decisive matter, I note that there are current proposals to redevelop the African Village premises. Therefore, its long term future is in doubt.
7. In respect of the compressor at the garage to the north west of the site, the appellant's evidence, following specific surveys, concludes that the noise associated with it is barely audible at the application site. Although I note the Council's criticism of the appellant's methodology in this respect, it has not produced any convincing evidence to persuade me that there is significant noise coming from the compressor. Therefore, I do not share the view of the council that the compressor would adversely affect the living conditions of the future occupiers of the flats.
8. I have also taken into account that the PPG says that neither the Noise Policy Statement for England nor the National Planning Policy Framework (which reflects the Noise policy statement) expects noise to be considered in isolation, separately from the economic, social and other environmental dimensions of proposed development.⁵ I am mindful that this site falls within the boundary of the Perry Barr Local Centre and that it has been identified in the SHLAA 2016 as capable of providing residential development that may help the City's future housing needs. The scheme has a clear social benefit.
9. On balance I conclude that the proposed development would provide acceptable living conditions for future occupants. Consequently, I find no conflict with PG3 of the Birmingham Development Plan (2017) which requires high standards of design that respond to site conditions.

Other Matters

10. Policy TP31 of the BDP requires provision of affordable homes in such schemes. The Council has agreed that the viability of the scheme would allow a payment of £151,200 towards the provision of affordable housing or for improvements to public open space and children's play. The Council has indicated that it would be spent on the provision of 4 or 5 affordable housing units off site. The appellant's statement says that this would be secured via a Section 106 agreement. However, I have no such legal agreement before me to secure the payment.

³ APP/P4605/W/16/3143604

⁴ APP/P4605/W/17/3170149

⁵ Paragraph: 002 Reference ID: 30-002-20140306

11. It is not appropriate in this case to use a planning condition to require a planning obligation to be entered into before the development commences. Such conditions should only be used in exceptional circumstances such as in the case of more complex and strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk.⁶ This is not such a case.
12. Without the legal agreement, the development would conflict with Policy TP31 as well as Paragraph 64 of the Framework which also requires affordable housing provision in major housing development.
13. I note the concerns of a local resident in respect of the proposed building blocking out daylight and sunlight, however, as the nearest dwelling is approximately 40m from the proposed building, I consider that there would be no such adverse effects upon the living conditions of local residents. I have considered all other matters raised but none outweigh the conclusions I have reached.

Conclusion

14. Whilst I find no harm to living conditions I find significant conflict with the Framework and development plan policy in respect of the lack of provision of affordable housing. Therefore, the appeal is dismissed.

Siobhan Watson

INSPECTOR

⁶ Planning Practice Guidance Paragraph: 010 Reference ID: 21a-010-20140306