
Appeal Decision

Hearing held on 10 December 2013

Site visits made on 10 December 2013 and 18-19 January 2014

by Jessica Graham BA(Hons) PgDipL

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 29 January 2014

Appeal Ref: APP/T3725/A/13/2199909

Nos. 1, 3 and 5 Russell Street, Leamington Spa, Warwickshire CV32 5QA

- 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 Techaid Facilities Ltd against the decision of Warwick District Council.
 - The application Ref W/13/0257, dated 25 January 2012, was refused by notice dated 13 May 2013.
 - The development proposed is change of use from office to residential.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The appeal site has a public house as an immediate neighbour, and it was agreed at the Hearing that it would be helpful for me to experience first-hand what conditions in the area are like at closing time on a busy night. I therefore carried out two site visits: an accompanied visit immediately after the Hearing, during which I entered the appeal premises, and an unaccompanied visit on a Saturday night, during which I simply observed the appeal site and its surroundings.
3. At the Hearing an application for costs was made by Techaid Facilities against the Council. That application is the subject of a separate Decision Letter of even date.

Main issues

4. The two main issues in this appeal are
 - (a) whether the living conditions of occupiers of the proposed residential accommodation would be unduly compromised by noise and disturbance associated with the adjoining pub; and
 - (b) the effect the proposal would have on highway safety.

Reasons

5. The premises the subject of this appeal are Nos. 1, 3 and 5, which form a two-storey terrace fronting Russell Street. No.1, a Grade II Listed Building, lies at the northern end of the terrace and turns the corner such that it also has a frontage on Clarendon Avenue. The first-floor accommodation of No. 1 extends

over an archway to meet the flank wall of the neighbouring White Horse pub. This arch forms the northern entrance to the courtyard which lies between the appeal premises and the pub. At the southern end of the courtyard there is a somewhat narrower entrance passage, above which the first-floor of the pub extends to meet the flank wall of No. 5 Russell Street. The appeal site is part of the Leamington Spa Town Centre and also the Leamington Spa Conservation Area. The proposed development would involve the conversion of No. 1 to a House in Multiple Occupation (HMO) with 7 bedrooms, and the conversion of Nos. 3 and 5 to provide a total of four self-contained flats.

Living conditions

6. The policies of the adopted Development Plan are broadly supportive of the provision of housing in town centre locations. Policy UAP1 of the Warwick District Local Plan 1996-2011 ("the Local Plan") states that residential development will be permitted on previously developed land and buildings within the confines of the urban areas, subject to other policies. That the current demand for office space is limited, and that the Council cannot identify sufficient land to meet the District's housing requirement for the next 5 years, are considerations which lend additional weight to the acceptability, in principle, of converting these vacant office premises to much-needed residential accommodation. Paragraph 51 of the government's National Planning Policy Framework (NPPF) provides strong support for the conversion of commercial premises in areas where there is an identified need for additional housing.
7. However, as local and national policies recognise, it is also important to bear in mind that town centres play an important role in supporting economic growth. A diverse and accessible town centre will attract people to use its shops and services, supporting new investment and jobs. The explanatory text to Policy TCP10 notes that while the provision of housing in a town centre has benefits in terms of overall diversity and vitality, it also brings pressures as different uses seek to co-exist. The NPPF seeks a good standard of amenity for future occupiers of new buildings (paragraph 17), and also states that existing businesses should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established (paragraph 123).
8. In this context, it is clear that any residential conversion of Nos. 1-5 Russell Street would need to be designed to ensure that future occupiers would not experience undue noise and disturbance as a result of the normal operation of the adjoining White Horse pub. The owners of that pub are understandably concerned that any deficiency in this regard could lead to considerable pressure to reduce the opening hours, and limit activities such as the playing of live and recorded music, currently permitted under the terms of the Premises Licence.
9. The planning application for the proposed development was accompanied by an "Acoustic Testing Report" dated September 2012. However, this only measured noise levels in two locations; the northern part of the pub courtyard outside the eastern elevation of the appeal premises, and a first-floor room overlooking Russell Street. No information was provided as to noise levels experienced in the suspended first-floor accommodation above the northern entrance arch to the pub courtyard, or at the southern elevation of the appeal premises, where noise is generated by vehicles using the exit ramp and barrier of the adjoining car parks, and by pedestrians using the southern access

passage to the pub courtyard. The report concluded that “with careful design, planning and adequate materials/specifications being used there is no reason why the future residents can’t enjoy a reasonable standard of living in the proposed development”.

10. That may be so, but very little information has been provided to demonstrate how this would be achieved, despite the fact that full (rather than outline) planning permission is sought. A subsequent “Noise Technical Report” dated October 2013, carried out on behalf of the owners of the White Horse pub, provided data from a wider variety of monitoring locations and recorded higher night-time noise levels in the pub courtyard. This raises the concern that the appellant’s assessment of the noise reduction required to achieve satisfactory noise levels inside the dwellings, which informed the design of the current proposal, may have been an underestimate.
11. The submitted plans show the proposed removal/infill of 8 windows and a door on the courtyard-facing elevation of the appeal premises and the creation of new windows on the southern elevation, but no details are provided of the materials to be used, or their acoustic properties, and the relevant plan is annotated “It may be that the existing windows are retained and upgraded with secondary sound reduction DG, by agreement with LA”. The appellant has submitted a copy of the *Secondary Glazing Specification Guide* for the Duration Window product range, but has not indicated which of these products would be installed, or where, or to what specification.
12. The Acoustic Testing Report of September 2012 rightly notes that not only the window treatment, but also facade and roof details, will be relevant to the noise levels experienced inside the proposed dwellings. However, no specific details of the noise attenuation that would be achieved by the design and materials of the proposed residential conversion have been provided.
13. The appellant contends that it would be sufficient simply to impose an appropriately worded condition, requiring a noise mitigation scheme to be submitted to and approved by the Council prior to commencement of development. But in the absence of the information discussed above, there can be no certainty that adequate soundproofing and ventilation measures could be incorporated without significantly altering the proposed design. For example, it may be necessary to add noise insulation to the walls and ceilings, or to install a floating floor to protect the suspended first-floor accommodation of the proposed HMO. This could result in significant alterations, with the potential to harm the proportions, character and appearance of the premises, including the listed building at No. 1. In addition, I share the Council’s concern that the proposed reliance, for noise reduction purposes, on installing non-openable windows and mechanical ventilation in some parts of the residential accommodation could have adverse impacts for the general health and wellbeing of future occupiers.
14. I note that the Council recently granted planning permission for the residential conversion of first- and second-floor offices at nearby No. 24 Russell Street, subject to a noise condition such as the appellant suggests would be appropriate here. But the evidence of the Council is that in that case, sufficiently detailed information had been provided to demonstrate that the intended sound insulation could be successfully accommodated as part of the proposed design. Such is not the case here.

15. There is evidence that highly variable and occasionally very loud erratic noise from customers of the White Horse pub, both within the courtyard and arriving and departing at night, would have the potential to cause sleep disturbance for occupiers of the proposed dwellings. I am not satisfied, on the basis of the limited information provided, that the proposed development makes adequate provision to mitigate this noise impact so as to provide a satisfactory standard of living accommodation for those occupiers. Given the importance of this consideration to the fundamental acceptability or otherwise of the residential conversion of the appeal premises, the implementation of an acceptable noise mitigation scheme is not a matter which can properly be left to condition.
16. I find that the proposal would conflict with the objectives of Policy DP2 of the Warwick District local Plan 1996-2011, which seeks to prevent development that does not provide acceptable standards of amenity for future occupiers.

Highway safety

17. There is no dispute that the appeal premises, being located within the town centre, occupy an accessible location with many options available for the use of sustainable modes of transport. There is a multi-storey and a surface car park in close proximity to the site, while on-street parking nearby is largely controlled as "Residents Parking Zones" (RPZs) for use by permit holders, with an element of "Pay and Display" parking limited to 2 hours between 8am and 8pm. The proposed development makes no provision for on-site parking, and the Council has expressed concern that this would be detrimental to the free flow of traffic and highway safety.
18. The Council's Supplementary Planning Document (SPD) *Vehicle Parking Standards* sets out the maximum parking provision that will be required from new residential development, but recognises that in some situations, the provision of parking below this standard will not give rise to any adverse impact on on-street parking. One such situation is where a S.106 Agreement is put in place to waive or reduce the new residents' rights to parking permits.
19. It is not clear to me why such a S.106 Agreement should be needed. Insofar as the Highway Authority's concern is that issuing any more residents' permits would detrimentally affect the safety and convenience of existing on-street parking, then I see no reason why it should not refuse to issue any further such permits, if necessary by amending the terms of the Traffic Regulation Order governing the operation of the RPZ. I note that in granting planning permission for the residential conversion of parts of 24 Russell Street (discussed above), the Council imposed a condition preventing occupation until the Traffic Regulation Order there in force had been amended to remove the rights of future occupiers to apply for residents' permits. I see no convincing reason (and was not provided with any at the Hearing) why a similar condition could not be used in respect of the current appeal proposal. Indeed, the representatives of the Council and the Highway Authority who attended the Hearing agreed that removing future occupiers' rights to apply for residents' permits would address their concerns about potential adverse impacts for the free flow of traffic and highway safety.
20. I consider that subject to such a condition, the proposed residential conversion of the appeal premises would not have any adverse impact on on-street parking. It is fair to note, however, that the Council's reasons for concluding that the proposed development would conflict with Policy DP8 were not solely

related to the implications for on-street parking. It was also concerned that the proposal made no provision for cycle parking, thus failing to encourage the use of sustainable modes of transport, and that the waste storage arrangements would be likely to result in bins being placed on the footway on refuse collection day, thus creating a hazardous obstruction to pedestrians.

21. The absence of any specific provision for cycle-parking within the development is clearly a failing. However, given the highly accessible town centre location of the appeal premises, within easy walking distance of a large number of shops, facilities and public transport in the form of both bus and rail services, future occupiers would still have a wide range of opportunities for travelling by sustainable modes of transport. The explanatory text to Policy DP8 makes it clear that its exhortation not to encourage unnecessary car use is largely concerned with resisting the provision of "excessive levels of car parking" at new developments. That would clearly not be a problem with this particular proposal. As to the question of waste storage arrangements, I do not underestimate the potential for ill-placed residential wheelie-bins to obstruct the public highway, but such potential must always exist in town centre locations. The appellant has indicated that arrangements could be put in place for refuse to be stored in the basement of No. 1, and it would be open to the Refuse Collection Authority to specify an appropriate place from which collection could be made on the appointed day.
22. On balance, I conclude that subject to the condition discussed above, the proposed development would not be detrimental to highway safety, would not encourage unnecessary car use, and would broadly accord with the overall aims and objectives of Policy DP8 of the Local Plan.

Other matters

23. The appellant points out that the Town and Country (General Permitted Development) (Amendment) (England) Order 2013, which came into force on May 2013, permits a change of use from offices to residential dwellings under a prior approval procedure. However, this form of permitted development does not apply to listed buildings, so while it may be applicable to the proposed residential conversion of Nos 3 and 5 Russell Street, it would not enable the proposed conversion of No.1 to an HMO. For the reasons set out above, I am not satisfied that any of the proposed residential accommodation would provide a satisfactory level of noise mitigation for future occupiers. The existence of permitted development rights that would technically allow the conversion of two of the three appeal premises to occur without any noise mitigation at all does not, in my judgment, constitute sufficient reason to grant planning permission for the residential conversion of all three premises in the absence of a satisfactory scheme for noise mitigation.
24. The Council accepts that it cannot currently demonstrate a five-year supply of deliverable housing sites. That being the case, as the appellant points out, paragraph 49 of the NPPF states that the relevant policies for the supply of housing should not be considered up-to-date. However, it is important to note that Policy DP2 of the Local Plan is not of specific relevance to the "supply of housing"; rather, it is concerned with the extent to which any type of development (a) impacts upon the amenity of nearby uses and residents and (b) provides acceptable standards of amenity for its own future users and

occupiers. In my view, the absence of a five-year supply of deliverable housing sites does not render this policy out of date.

Conclusion

25. I find that there are no material considerations of sufficient weight to overcome the conflict with Development Plan policy that I have identified above. The benefits of providing additional housing in an accessible town-centre location would be significantly and demonstrably outweighed by the adverse impacts associated with its failure to make adequate provision for noise mitigation; namely an unsatisfactory standard of living accommodation for future occupiers, and the consequent likelihood of pressure for the adjoining pub to curtail its existing business operations.
26. I therefore determine that the appeal should be dismissed.

Jessica Graham

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

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| Mr P Airey | Planning Consultant, Paul Airey Planning Associated Ltd |
| Mr P Macaire | Project Architect, Macaire Associates |
| Mr M Vine | Acoustics Consultant, Airtight Noisecheck Ltd |
| Mr M Gardener | Techaid Facilities Ltd |

FOR THE LOCAL PLANNING AUTHORITY:

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| Ms E Spandley | Senior Planning Officer, Warwick District Council |
| Mr P Lawson | Environmental Health Officer, Warwick District Council |
| Ms K Watkins | Representing Warwickshire County Council, as Highway Authority |

INTERESTED PERSONS:

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| Mr M Plaw | Associate Director, Colliers International |
| Mr N Mann | Director, WYG Planning & Environment |

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Statement of Common Ground between the appellant and the Council
- 2 Extract of Premises Licence for the White Horse pub
- 3 Full copy of Premises Licence for the White Horse pub
- 4 Copy of the appellant's application for an award of costs
- 5 Copy of the Council's response to the appellant's costs application

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