



Appeal Decision

Site visit made on 26 September 2023

by A Berry MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 October 2023

Appeal Ref: APP/B4215/W/23/3321228

Ground floor of Zhakaf Court, 332 Slade Lane & 267-269 Moseley Road, Manchester M19 2LJ

- 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 Mr Hozan Rahman against the decision of Manchester City Council.
- The application Ref 135624/FO/2022, dated 30 November 2022, was refused by notice dated 20 February 2023.
- The development proposed is the change of use from 3no ground floor Class C3 dwellings to 3no Class E units, including new shop frontages and fenestration changes.

Decision

1. The appeal is allowed and planning permission is granted for the change of use from 3no ground floor Class C3 dwellings to 3no Class E units, including new shop frontages and fenestration changes at the ground floor of Zhakaf Court, 332 Slade Lane and 267-269 Moseley Road, Manchester, M19 2LJ in accordance with the terms of the application, Ref 135624/FO/2022, dated 30 November 2022, and subject to the conditions in the schedule below.

Procedural Matter

2. The street name in the banner heading above is spelt differently from that contained within the planning application form. This is to correct a minor spelling error. I have determined the appeal on this basis.

Main Issues

3. The main issues are the effect of the proposed development on:
 - a) the living conditions of the occupiers of existing properties, with particular reference to noise and disturbance; and
 - b) greater-needed family housing.

Reasons

Living Conditions – Noise and Disturbance

4. The appeal site comprises three ground floor two-bedroom flats. It is proposed to change the flats into three Class E¹ units, with associated works to install shop frontages. The upper floors above the appeal site comprise self-contained flats, while dwellings are also located to either side of the appeal site and within the surrounding area. The appeal site is on the corner of a traffic-

¹ Class E of the Town and Country Planning (Use Classes) Order 1987 (as amended)

controlled crossroads surrounded by a mix of commercial uses including offices, beauty salons, a convenience store, a public house and a bowling club. At the time of my site visit there was a high level of background noise and frequent comings and goings of pedestrians and vehicles.

5. Class E includes a wide range of uses that could have the potential for customers, deliveries, collections and servicing vehicles to harm the living conditions of the occupiers of neighbouring properties, particularly those in the upper floors of the building. However, the appeal site is within an existing mixed-use area whereby occupiers of existing dwellings are subjected to noise associated with the various commercial uses as well as vehicle noise. Conditions restricting the opening hours of the proposed Class E units and the times when deliveries, collections and servicing are undertaken would ensure that any adverse noise and disturbance would not occur early in the morning or late into the evening. While people congregating in front of the units could occur, this is unlikely to happen after the units close, which could be restricted to the early evening so as not to adversely affect the living conditions of the occupiers of neighbouring properties.
6. Concern has been raised regarding a lack of site management arrangements. However, measures could be agreed by condition to ensure that the Class E units could operate without harm to the living conditions of the occupiers of neighbouring properties. It has been suggested that a restaurant/café should be omitted from the Class E uses that could operate from the appeal site. However, I am not persuaded that a restaurant/café use operating under restricted opening hours would be more disruptive than another Class E use.
7. In reference to the first main issue, the proposed development would not harm the living conditions of the occupiers of existing properties, with particular reference to noise and disturbance. It would therefore comply with Policies C10, SP1 and DM1 of Manchester's Local Development Framework Core Strategy Development Plan Document, adopted 2012 ('the CS') and Saved Policies DC10 and DC26 of The Manchester Plan: The Unitary Development Plan for the City of Manchester, adopted 1995 which, amongst other things, seek to ensure that developments have regard to their effect on amenity, including noise.

Greater-Needed Family Housing

8. The proposal would result in the loss of three two-bedroom flats. Although, due to their size, they are not likely to attract significant rental/sales prices, there is nothing before me to suggest that they are affordable housing, as defined within the Annex 2: Glossary of the National Planning Policy Framework. I acknowledge that the flats each have two bedrooms and therefore could be occupied by a small family. However, the assertion that the loss of the flats would reduce the supply of much needed family housing has not been substantiated with evidence. Furthermore, I have not been directed to a policy that requires the appellant to demonstrate that the flats are no longer viable before a change of use can be approved.
9. I have been directed to CS Policies SP1, H1 and H6 which refer to the Council's spatial principles; the overall provision of new dwellings; and new housing developments in South Manchester. However, the proposal is not for new housing and the policies do not prohibit the conversion of existing housing to other uses. Furthermore, the Council has not indicated that they cannot meet

their five-year supply of deliverable housing sites or that the Housing Delivery Test indicates that the delivery of housing is substantially below the housing requirement over the previous three years.

10. In reference to the second main issue, the proposed development would not lead to a loss of greater-needed housing. It would therefore not conflict with Policies SP1, H1 and H6 of the CS which, amongst other things, seek to increase the availability of family housing outside the Inner Areas where lower densities may be appropriate; accommodate around 5% of new housing development over the lifetime of the Core Strategy; meet identified shortfalls, including family housing and provision that meets the needs of elderly people, with schemes adding to the stock of affordable housing.
11. The Council's reason for refusal references CS Policy DM1. However, this policy refers to specific issues that all development should have regard to and is not directly relevant to this main issue.

Other Matters

12. Concern has been raised regarding the potential occupation of the units by takeaways; issues associated with takeaways such as parking, litter and odours; and a saturation of takeaways in the area. However, the proposal is for Class E uses, which exclude takeaways. I acknowledge that there are vacant units in proximity of the appeal site, however, the appellant is not required to demonstrate a need for the proposed uses.
13. The building is located on the corner of a busy crossroads whereby double yellow lines are present. Any parked vehicles causing an obstruction or parking on double yellow lines would be matters controlled by provisions separate from the planning regime. The proposal would result in the removal of parking spaces to the front of the building which could result in demand for parking elsewhere by both the occupiers of the upper flats and future customers. However, the site is within an accessible urban area where there should not be an over-reliance upon private vehicles and even if there may be some increased pressure for on-street parking, it could generally be achieved safely, given the attributes of the surrounding roads. Furthermore, the Highways Authority has raised no objection to the proposed development and welcomes the removal of the existing parking spaces due to highway safety concerns.
14. Concern has been raised that it could be difficult to install and operate an appropriate extract system if required by a future café/restaurant use. However, this has not been substantiated with evidence. Furthermore, a condition requiring the submission and approval of details prior to the occupation of a restaurant/café use would ensure that a satisfactory system is installed.

Conditions

15. I have had regard to the conditions suggested by the Council. Where necessary, I have made amendments to these in the interests of clarity and precision. In addition to the standard condition, which relates to the commencement of development, I have specified the approved plans for the avoidance of doubt and in the interests of proper planning. A condition in respect of materials is necessary to ensure the appearance of the development would be satisfactory.

16. Conditions in respect of a site management plan for servicing, deliveries and collections and the management of waste and recycling storage; the implementation and retention of storage arrangements; a restriction on opening hours; and a restriction on the timings of servicing, deliveries and collections, are considered necessary to ensure the appearance of the development would be satisfactory, to reduce noise and disturbance, and to ensure vehicles and bins do not pose a highway safety issue.
17. The submission of a scheme to secure a reduction in the level of noise emanating from the ground floor Class E units and to attenuate against noise transfer to the upper floor flats is necessary as the submitted Braiden Acoustics Ltd Noise Impact Assessment, Ref: 11072Rev A, dated 15 August 2022 focuses on a hot food takeaway and associated external plant that is not applicable to the appeal proposal. Although not included in the Council's list of recommended conditions, the Environmental Protection Officer requested conditions in respect of an extract system and the restriction of hours for demolition and construction. I agree that these conditions are necessary to make the proposed development acceptable to the living conditions of neighbouring occupiers, however, I have amended the extract system condition to be more concise.
18. The implementation of cycle parking facilities for staff and customers is necessary to encourage the use of sustainable modes of transport. While a condition requiring the appropriate security and crime reduction measures to be agreed and implemented is necessary to reduce the risk of crime.
19. A condition detailing that the permission relates to three ground floor Class E units is not necessary as this is detailed within the description of development. It has been suggested that the proposed Class E uses should be restricted to retail shops and/or the provision of financial and professional services in the interests of reducing noise and disturbance. However, this would be unreasonable as I have already determined any harm to the living conditions of occupiers of neighbouring properties from noise and disturbance could be mitigated by conditions restricting the delivery, servicing and collection times and opening hours.

Conclusion

20. For the reasons outlined above, having had regard to the development plan as a whole and all other matters raised, the appeal should be allowed.

A Berry

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be begun not later than three years from the date of this permission.
- 2) The development hereby permitted shall not be carried out except in complete accordance with the details shown on the following approved plans and documents:
 - P01 - Location & Site Plans – As Existing;
 - P03 - Elevations as Existing; and
 - P04 – Plan – As Proposed.
- 3) Prior to the alterations to the front elevation commencing, samples and specifications of all materials to be used on all external elevations of the development shall be submitted to and approved in writing by the local planning authority, including details of the shopfront and roller shutters, if applicable. The development shall be implemented in accordance with the approved materials, which shall be retained thereafter.
- 4) Prior to the first occupation of the development hereby permitted, a site management plan shall be submitted to and approved in writing by the local planning authority, including details for the stewardship of vehicles undertaking servicing, deliveries and collections to and from the site and the management of waste and recycling storage (including the return of bins to storage areas following collection). The approved details shall be implemented prior to the first occupation the development and shall be retained thereafter, and the units shall operate in adherence of the approved details.
- 5) Prior to the first occupation of the development hereby permitted, the arrangements for the storage of waste and recycling management, as detailed in the Manchester City Council Planning Application - Waste Management Strategy proforma dated 25 July 2022 and drawing Ref P04 titled "Plan – As Proposed", shall be implemented in full and maintained thereafter.
- 6) Prior to the first occupation of the development hereby permitted, details of appropriate security and crime reduction measures to be incorporated into the development shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details, which shall be in place upon first occupation of the development and maintained thereafter.
- 7) Prior to the first occupation of the development hereby permitted, the arrangements for the storage of 6 cycles as shown on drawing Ref: P04 titled "Plan - As Proposed" shall be fully implemented and retained thereafter.
- 8) Prior to the first occupation of the development hereby permitted, a scheme shall be submitted to and approved in writing by the local planning authority to secure a reduction in the level of noise emanating from the ground floor Class E units and to attenuate against noise transfer to the upper floor apartments. The approved scheme shall be implemented prior to the first occupation of the development hereby permitted and shall be maintained thereafter.

- 9) Prior to a café/restaurant use occupying any of the Class E units hereby permitted, equipment to control the emission of fumes and smell from the premises shall be installed prior to occupation in accordance with a scheme to be first submitted to and approved in writing by the local planning authority. All equipment installed as part of the approved scheme shall thereafter be operated and maintained in accordance with that approval and retained for so long as the use continues.
- 10) The Class E uses hereby permitted shall only be open between the following hours: Monday to Sunday (including Bank/Public Holidays): 8.00am to 8.00pm.
- 11) No deliveries, servicing or waste collections shall take place outside the following hours: Monday to Saturday: 7.30am to 8.00pm, with no deliveries, servicing and collections on Sunday and Bank/Public Holidays.
- 12) Construction/demolition works shall be restricted to the following hours: Monday to Friday: 7.30am to 6:00pm, Saturday: 8.30am to 2:00pm; with no work on Sunday and Bank/Public Holidays.

*****End of Conditions*****