



Appeal Decision

by C MacFarlane BSc(Hons) MSc MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 08/09/2023

Appeal reference: CAS-02737-C3R2Y0

Site address: 1 Bear Passage, Welshpool SY21 7JL

- 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 R Lloyd against the decision of Powys County Council.
 - The application Ref 22/1849/FUL, dated 1 November 2022, was refused by notice dated 26 April 2023.
 - The development proposed is change of use of former sandwich bar premises to create single dwelling unit.
 - A site visit was made on 18 July 2023.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposal on the living conditions of future occupiers, with regard to noise.

Reasons

3. The appeal property is a vacant commercial unit arranged over two storeys and fronting onto a pedestrian passageway leading from the adjoining highway. The neighbouring building, 38 High Street, and an entrance to the licensed bar/nightclub within, is situated on the opposite side of the passageway.
4. Due to the close proximity of the bar/nightclub, future occupiers of the appeal property would likely experience a substantial amount of noise disturbance from patrons as they queue, enter, exit and gather around the premises, and from music and other internal sounds, particularly whilst the entrance door is open. Any effects would be exacerbated by the modest size of the proposal, which would provide little opportunity for future occupiers to distance themselves from noise sources.
5. Although the bar/nightclub is currently not in use, there is a valid licence in place allowing operation every day and night, mostly until the early hours of the morning, and this could be implemented at any time. The hours of operation would also result in any noise potentially occurring frequently and over extended periods of time, particularly during the night when future occupiers of the appeal property would be most sensitive to sound. Whilst the appellants contend that any future use of the bar/nightclub is unlikely and

would be infrequent, such comments are unsubstantiated and I cannot be confident this would be the case. The Council's reference to previous noise complaints from nearby occupiers in relation to the bar/nightclub serves to reinforce my concerns that there would be a harmful effect as a result of noise.

6. I acknowledge the submitted Noise Assessment, which concludes that predicted noise levels experienced within the appeal property could be managed to within acceptable limits. However, this would be dependent in part upon the windows and door to the front elevation remaining closed. To my mind, requiring future occupiers to keep windows and doors closed for lengthy periods of time, all year round is unlikely to be practical or realistically achievable. Nor am I satisfied that this would result in an acceptable living environment, given the need for air flow and temperature control, with the only usable opening being a single window in the rear elevation at first-floor level. I note the appellant's willingness to accept a condition to secure the provision of a mechanical ventilation system. However, based on the limited information provided, I am unable to conclude that this would be an effective and acceptable solution.
7. Drawing together all of the above, I find that the proposal would cause significant harm to the living conditions of future occupiers, with regard to noise. It would therefore conflict with LDP Policy DM13, which seeks to ensure the amenities of the occupants or users of nearby or proposed properties shall not be unacceptably affected by levels of noise.

Other Matters

8. I note the appellant's comments regarding difficulties in securing an alternative use for the property and that the proposal would bring vacant premises back into use, which may contribute to the vitality of the town centre. However, given the small scale of the proposal, such a benefit is likely to be relatively limited and therefore would not outweigh the harm I have identified.
9. Although a nearby property may have been converted to residential use in previous years, I do not have the details of this before me, or confirmation that the same policy framework was in place at that time. I therefore cannot be sure this represents a direct parallel with the proposal before me and, in any event, I must determine this appeal on its own merits. Accordingly, I afford this matter little weight.
10. Concerns raised by the appellant regarding the Council's handling of the planning application do not alter my assessment of the planning merits of the proposal.
11. In reaching my decision, I have considered the duty to improve the economic, social, environmental and cultural well-being of Wales, in accordance with the sustainable development principle, under section 3 of the Well-Being of Future Generations (Wales) Act 2015 (WBFG Act). I have taken into account the ways of working set out at section 5 of the WBFG Act and consider that this decision is in accordance with the sustainable development principle through its contribution towards one or more of the Welsh Ministers well-being objectives, as required by section 8 of the WBFG Act.

Conclusion

12. For the reasons given above, the appeal is dismissed.

Claire MacFarlane

INSPECTOR