

DELEGATED APPLICATION REPORT

Ward:

App Ref: PL/25/0116 Removal/variation of conditions

Address: 26, Prospect Street, Caversham, Reading, RG4 8JG

Proposal: Variation of conditions 5 and 6 of application PL/22/1681 (Conversion of first floor and second floor from offices to 1 x 2-bed dwelling (C3 Use Class))

Applicant: Ms C. Buckley

Received date: 23 January 2025

Target Decision date: 28 March 2025

Case Officer: Anthony Scholes

1. SITE DESCRIPTION

The proposal site consists of a two-storey terraced building on Prospect Street, Caversham. The proposal site is located within Caversham District Centre. The ground floor of the buildings along Prospect Street consist of centre uses at ground floor level, such as shops, restaurants and cafes. The ground floor to 26 Prospect Street consists of a dentist, with the first floor consisting of offices.

26 Prospect Street is located within the Air Quality Management Area and within the Article 4 that restricts the conversion of Class E units to residential under permitted development.

2. PROPOSAL AND SUPPORTING INFORMATION

This variation application seeks to amend conditions 5 and 6 related to acoustic assessment requirements of the above planning permission.

The following was provided in support of this application:

- The 'Syntegra consulting', Noise Impact Assessment, dated October 2023
- The 'Clarke Saunders acoustics, "Pre-completion testing sound insulation report", dated 15 September 2023

Received on 23 January 2025

3. CONSULTATIONS

A site notice was erected at the site. One comment was received and objected to reducing the applicable sound insulation requirements.

RBC Environmental health

The applicant is meeting the sound level difference of 55 dB, but when the low frequency bit is included they are not. This should be acceptable for the noise being from a dental practice as there is unlikely to be significant low frequency noise.

4. LEGAL AND PLANNING POLICY CONTEXT

Section 73 of the Town and Country Planning Act allows persons to apply for to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted.

S73(2) states: "On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and—

- (a) *if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and*
- (b) *if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.”*

In a recent high court appeal case, it was noted that “section 73 cannot be used to alter the operative part of a permission in any way unless the change is *de minimis* (*Test Valley Borough Council v Fiske* [2024] EWCA Civ 1541 (10 December 2024)).

As such, it is clear that the application cannot, in varying the conditions of an approval vary the operative components contained within the description of the development.

5. EQUALITY ACT 2010

In determining this application the Council is required to have regard to its obligations under the Equality Act 2010. However, there is no indication or evidence (including from consultation on the application) that the protected groups identified by the Act have or will have different needs, experiences, issues and priorities in relation to this particular planning application. Therefore in terms of the key equalities protected characteristics it is considered there would be no significant adverse impacts as a result of the development.

6. APPRAISAL

Requirements under s.73

As outlined above, a 73 application can only vary conditions of a permission. It cannot change the operative component of the development originally approved.

In this instance the proposal seeks to amend the dB level allowable under the condition to reflect the as constructed levels which complies with the relevant building regulation requirements. The applicant has provided information on the sound insulation measures that limits any further reductions as it would require installing further materials within the roof of the ground floor premise which it has no right to do nor ability to access.

Though the higher level of acoustic attenuation is sought, it is considered that in this limited instance, the applicant has provided as much as practicable to meet the requirements and cannot do any further. As such, condition 5 has been amended to a compliance condition in accordance with the details submitted, and condition 6 has been deleted.

7. CONCLUSION

Given the sound levels achieved comply with building regulations, and sufficient evidence has been submitted demonstrating efforts to achieve the original condition, that the condition can be amended to reflect the levels achieved.

8. RECOMMENDATION

Grant.