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## Appeal Decision

Hearing Held on 21 January 2020 and 29 April 2021

Site visit made on 5 May 2021

**by Thomas Hatfield BA (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 24<sup>th</sup> May 2021**

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### **Appeal Ref: APP/B4215/W/19/3232722 121 Princess Street, Manchester, M1 7AG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of approval subject to conditions.
- The appeal is made by Beech Holdings (Manchester) Limited against the decision of Manchester City Council.
- The application Ref 121754/JO/2018, dated 2 November 2018, was approved on 7 June 2019 and approval was granted subject to conditions.
- The development permitted is prior notification of change of use from offices (Class B1) for change of use to 126 apartments (use class C3) comprising 100 studios, 25 x 1 bed, and 1 x 2 bed.
- The condition in dispute is No 2 which states that:
  - (2) (a) *Within 4 weeks of the date of this decision, a scheme for acoustically insulating the residential dwellings hereby permitted against any actual or potential sources of noise from any commercial/industrial premises in the vicinity of the development (including in particular entertainment noise from the lawful operation of the nightclub in the basement of the premises and the potential entertainment noise from the permitted use of the currently-vacant ground floor of the premises) shall be submitted to the local planning authority in writing for its written approval. The scheme shall:*
    - (i) *provide details of the acoustic insulation already installed in the development,*
    - (ii) *demonstrate whether and, if so, how the acoustic insulation installed in the development achieves the following noise criteria in respect of all apartments hereby permitted:*
      - *Bedrooms (night time - 23.00 - 07.00): 30 dB LAeq (individual noise events shall not exceed 45 dB L<sub>Amax,F</sub> by more than 15 times)*
      - *Living Rooms (daytime - 07.00 - 23.00) 35 dB LAeq*
      - *Gardens, balconies and terraces (daytime) 55 dB LAeq*
      - *in respect of the entertainment noise from the basement and ground floor premises, noise levels in the 63Hz and 125Hz octave centre frequency bands do not exceed 47dB and 41dB, respectively in habitable rooms, measured at 5 minute intervals over both the daytime and night time periods set out above.*
    - (iii) *where the existing acoustic insulation does not achieve all of the noise criteria stated above, the scheme must provide details of the further acoustic insulation to be provided or other measures to be taken and shall demonstrate that the further insulation or measures would achieve compliance with each of the noise criteria specified above. The scheme must also specify a timetable for the carrying out of such further measures;*
    - (iv) *Where additional works or measures are required, the scheme shall include for the local planning authority's approval details of the sound testing and other steps which will be taken to ascertain whether the works or measures have achieved*

*compliance with the criteria set out in part (a) of this condition and which will form part of the verification report referred to below.*

*Where further acoustic insulation or other measures are required and set out in the scheme, that further insulation shall be installed and/or those measures shall be taken within the timescale approved by the local planning authority.*

*(b) Within 4 weeks of the completion of the further insulation works or other measures detailed in the approved scheme for acoustic insulation, a further report (the "verification report") shall be submitted to the local planning authority for approval. The verification report must accord with the details approved by the local planning authority and must demonstrate:*

*(i) That the further acoustic insulation or other measures have been installed or taken, that they have been tested and whether they achieve the internal noise criteria set out above, and*

*(ii) If the verification report does not demonstrate that the noise criteria specified above can be met, the report shall include details of the further works or measures to be taken ("the remedial works") to achieve compliance with the noise criteria specified above, together with a timetable for their carrying out. The remedial works shall be carried out in accordance with the approved timetable and the requirements of part (b) of this condition shall apply to the remedial works and any subsequent requirement for further remedial works.*

*(c) The acoustic insulation and any other measures forming part of the approved scheme or schemes and any verification report shall be retained in situ for as long as the use hereby permitted continues.*

*(d) In the event that the developer fails to comply with any of its obligations under this condition, then the occupation of any apartment hereby permitted shall cease within 4 weeks of the local planning authority confirming in writing that such a failure has occurred and no apartment shall be re-occupied until the local planning authority has confirmed in writing that any failure to comply with this condition has been remedied.*

- The reason given for the condition is:

*(2) To secure a reduction in noise from commercial and entertainment sources in order to protect residents from noise disturbance pursuant to Core Strategy Policies DM1 and SP1 and saved UPD Policy DC26.*

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## **Decision**

1. The appeal is allowed and approval Ref 121754/JO/2018 for prior notification of change of use from offices (Class B1) for change of use to 126 apartments (use class C3) comprising 100 studios, 25 x 1 bed, and 1 x 2 bed at 121 Princess Street, Manchester, M1 7AG granted on 7 June 2019 by Manchester City Council, is varied by deleting condition 2 and substituting for it the condition set out in the attached schedule.

## **Preliminary Matters**

2. A structural survey and a programme of noise testing were jointly commissioned during the course of the appeal. The structural survey found that the installed noise mitigation scheme differed significantly in its design from the one that had previously been approved<sup>1</sup> by the Council.
3. A series of legal and technical submissions were made by the parties in the appeal submissions. However, prior to the reconvened hearing, the appellant

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<sup>1</sup> Ref CDN/17/0080

withdrew its contention that I had no jurisdiction to hear the appeal, and its challenge to the imposition of condition 2 in principle. I have therefore not considered these matters in any further detail.

### **Background and Main Issue**

4. Prior approval<sup>2</sup> to convert the appeal building to apartments under Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) was granted on 22 November 2016, subject to conditions. Condition 3 of that approval required a scheme of acoustic insulation to be submitted and approved by the Council and installed prior to the occupation of the development. Subsequently, the Council approved an application<sup>3</sup> under s73A of the Town and Country Planning Act 1990 (as amended) to vary Condition 3 to the original Class O consent, to which the disputed condition is attached.
5. The appeal seeks to alter a number of elements of the condition. In that context, the main issue is whether the disputed condition is reasonable and necessary having regard to the living conditions of occupiers of the development, and the operation of existing businesses.

### **Reasons**

6. The disputed condition requires a supplemental scheme of acoustic insulation to be submitted for approval within 4 weeks. At the hearing, the Council stated that this timescale was based on its Officer's experience in dealing with other schemes across the City. However, this case is unusual in that a supplemental scheme is to be retrospectively installed alongside an existing acoustic scheme within the building. It is therefore doubtful whether the current proposal is directly comparable to other schemes in Manchester.
7. At the hearing, the Appellant stated that they had sought specialist advice which indicated that further intrusive investigations of the building would be necessary before a supplemental scheme could be designed. In this regard, the jointly commissioned structural survey was not intended to explore the possibility of installing a new acoustic insulation scheme, and so I accept that further investigations are likely to be required. In my view, 4 weeks would be insufficient for these investigations to take place and for a supplemental scheme to be drawn up. The Appellant also stated that they had been advised that 16 weeks would be required for this to take place. Whilst Fifth Leisure suggested that this timescale be reduced to 12 weeks, that was not based on any detailed analysis. The specialist advice sought by the Appellant is not before me, and each of the options put forward are imperfectly evidenced. However, based on the information before me, I consider that a 16 week timescale is the most reasonable approach.
8. The disputed condition does not specify a timescale for installing the supplemental scheme, and it instead requires that a timescale be submitted for approval. This timescale will clearly depend on the nature of the proposed scheme and the works that are required in order to install it. In this regard, I do not consider that the condition should specify a timescale of 6 months for installation, as this would inevitably become the default position. In my view, any timescale should be the minimum necessary for that design.

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<sup>2</sup> Ref 114023/P3OPA/2016

<sup>3</sup> Ref 121754/JO/2018

9. The timescale for submitting the verification report is currently specified as being within 4 weeks of the completion of the supplemental scheme. At the hearing, the appellant confirmed that this would be achievable if co-operation from Fifth Leisure was forthcoming, although an extension to 8 weeks was requested in order to provide greater flexibility. In this regard, I note that Fifth Leisure has already co-operated on the joint testing that has taken place, and it is clearly in its interest to resolve matters as quickly as possible. Accordingly, I do not consider that this timescale should be extended.
10. The disputed condition requires the occupation of all apartments to cease within 4 weeks of the Council confirming in writing that a failure to comply with any part of the condition has occurred. The appellant suggested that this be amended so that it would apply only to those apartments that were not in compliance. This amendment would ensure that any sanction is proportionate and only applied to the affected apartments rather than to the whole scheme.
11. In its submissions, Fifth Leisure stated that the disputed condition should be amended to require all apartments to be vacated within 6 weeks, with re-occupation only permitted once the verification report is approved. In this regard, were the existing situation to continue for a significant period of time, then it could lead to an abatement notice being served on the nightclub, and / or a significant loss of earnings.
12. The existing situation is clearly unsatisfactory, as has been confirmed by the jointly commissioned noise testing. However, the amendment suggested by Fifth Leisure would have significant implications for the current occupiers of the apartments. In this regard, the existing tenancy agreements are not before me and it is unclear what, if any, re-housing arrangements exist. Whilst the disputed condition currently requires the apartments to be vacated within 4 weeks in the event of any non-compliance, that would only be triggered if the condition was not adhered to. In contrast, the proposed amendment would require the building to be vacated within 6 weeks, which could render the current occupiers homeless under all circumstances. This would be disproportionate in my view, particularly given that a middle position exists to compress the timescales proposed by the appellant so that the current situation is resolved promptly.
13. Separately, the Appellant suggested that the disputed condition be amended to allow for alternative timescales to be agreed with the Council. However, given the need to resolve the existing situation, I prefer the greater certainty provided by clear timescales.
14. During the course of the appeal, details of the acoustic insulation that had previously been installed were provided as part of the joint structural survey. Moreover, jointly commissioned noise testing in relation to the installed scheme of acoustic insulation was undertaken. Accordingly, it is unnecessary for the condition to require these matters to be revisited.
15. The disputed condition also specifies noise criteria in relation to gardens, balconies, and terraces. However, the appeal proposal does not contain any such features, and so this requirement is unnecessary.

## **Conclusion**

16. For the reasons given above I conclude that the appeal should succeed. I will vary the approval by deleting the disputed condition and substituting another.

*Thomas Hatfield*

INSPECTOR

## Schedule of Conditions

- 2) (a) Within 16 weeks of the date of this decision, a supplemental scheme for acoustically insulating the residential dwellings hereby permitted against any actual or potential sources of noise from any existing commercial/industrial premises in the vicinity of the development (including in particular entertainment noise from the lawful operation of the nightclub in the basement of the premises and the potential entertainment noise from the permitted use of the currently-vacant ground floor of the premises) shall be submitted to the Local Planning Authority in writing for its written approval. The scheme shall:
- (i) demonstrate how the acoustic insulation to be installed in the development will achieve the following noise criteria in respect of all apartments hereby permitted:
    - Bedrooms (night time - 23.00 - 07.00): 30 dB LAeq (individual noise events shall not exceed 45 dB L<sub>Amax,F</sub> by more than 15 times)
    - Living Rooms (daytime - 07.00 - 23.00) 35 dB LAeq
    - in respect of the entertainment noise from the basement and ground floor premises, noise levels in the 63Hz and 125Hz octave centre frequency bands do not exceed 47dB and 41dB, respectively in habitable rooms, measured at 5 minute intervals over both the daytime and night time periods set out above;
  - (ii) include details of the sound testing and other steps which will be taken to ascertain whether the works or measures have achieved compliance with the criteria set out in part (a) of this condition and which will form part of the verification report referred to below;
  - (iii) specify a timetable for the carrying out of such measures.
- (b) The supplemental acoustic insulation scheme approved by the Local Planning Authority shall be installed in accordance with the approved timetable.
- (c) Within 4 weeks of the completion of the approved supplemental acoustic insulation scheme, a further report (the "verification report") shall be submitted to the Local Planning Authority for their written approval. The verification report must accord with the details approved by the Local Planning Authority and must demonstrate:
- (i) That the further acoustic insulation or other measures have been installed or taken, that they have been tested and whether they achieve the internal noise criteria set out above, and;
  - (ii) If the verification report does not demonstrate that the noise criteria specified above can be met, the report shall include details of the further works or measures to be taken ("the remedial works") to achieve compliance with the noise criteria specified above, together with a timetable for their carrying out. The remedial works shall be carried out in accordance with the approved

timetable and the requirements of part (c) of this condition shall apply to the remedial works and any subsequent requirement for further remedial works.

(d) The acoustic insulation and any other measures forming part of the approved scheme or schemes and any verification report shall be retained in situ for as long as the use hereby permitted continues.

(e) If any obligations under this condition are not complied with in respect of the permitted apartments then the occupation of any apartment (or apartments) in respect of which there is non-compliance shall cease within 4 weeks of the Local Planning Authority confirming in writing that such a failure has occurred and no such apartment shall be re-occupied until the Local Planning Authority has confirmed in writing that any failure to comply with this condition has been remedied.

## **APPEARANCES**

### **FOR THE APPELLANT:**

|            |                       |
|------------|-----------------------|
| J Easton   | Kings Chambers        |
| V McKeegan | Town Legal            |
| D Field    | Town Legal            |
| V Leam     | Kuit Steinart Levy    |
| Z Bennett  | Kuit Steinart Levy    |
| E Wright   | Dwell Student Living  |
| P Davidson | Beech Construction    |
| J Yeo      | Centurion Corporation |

### **FOR THE LOCAL PLANNING AUTHORITY:**

|            |                         |
|------------|-------------------------|
| I Ponter   | Kings Chambers          |
| R Irving   | Manchester City Council |
| A Leckie   | Manchester City Council |
| R Knightly | Manchester City Council |
| L Miller   | Manchester City Council |

### **FOR FIFTH LESIURE:**

|           |                |
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| D Manley  | Kings Chambers |
| L Gordon  | Weightmans     |
| E Field   | Weightmans     |
| N Johnson | Fifth Leisure  |
| M Rickard | Miller Goodall |

## **DOCUMENTS SUBMITTED AT THE HEARING**

- 1 Fifth Leisure Response to Appellant's Position Statement