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# Appeal Decision

Site visit made on 28 October 2024

**by C Cresswell BSc (Hons) MA, MBA, MRTPI**

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

**Decision date: 12<sup>th</sup> November 2024**

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**Appeal Ref: APP/H5390/W/24/3343647**

**Upper Floors, 425 New King's Road, Hammersmith and Fulham, London, SW6 4RN**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
  - The appeal is made by Wellington Pub Company against the decision of the Council of the London Borough of Hammersmith and Fulham.
  - The application Ref is 2023/02708/PMA56.
  - The development proposed is conversion of first, second and third floors to 6 flats.
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## Decision

1. The appeal is dismissed.

## Procedural Matter

2. The Council confirms that it wishes to withdraw the fourth reason for refusal listed on its Decision Notice. This concerns the length of time for which the premises have been empty. The Council has also confirmed that the third reason for refusal (cycle and refuse storage) could be overcome by imposing a planning condition. Hence, this appeal is mainly focused on the first reason for refusal (noise) and the second reason for refusal (parking).

## Main Issue

3. The main issue in this case is whether the proposed development is permitted by Schedule 2, Part 3, Class MA of the GPDO<sup>1</sup>, having particular regard to MA.2(2)(d) *impacts of noise from commercial premises on the intended occupiers of the development*, and MA.2(2)(a) *transport impacts of the development, particularly to ensure safe site access*.

## Reasons

### Noise

4. The appeal concerns a building which wraps around the corner of a busy road junction. There is a public house (the Kings Arms) on the ground floor, while the upper floors are currently vacant. A Noise Impact Assessment<sup>2</sup> (the NIA) has been prepared which examines noise levels in the building. This describes the commercial noise generated by the public house and concludes that that mitigation measures would be necessary in the event of the upper floors being converted into residential units as proposed.

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<sup>1</sup> Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

<sup>2</sup> Environmental Noise Impact Assessment, Impact Acoustics.

5. Some of the mitigation measures being proposed require alterations to the public house itself. This includes upgrading the roof of the glazed area at the rear and placing an acoustic case and silencers on the kitchen extract fan. According to the NIA, the entire building is in the same ownership, with the ground floor public house leasing the premises. I accept that the red line area of the application covers the whole building. However, it is not entirely clear from the information provided whether the appellant is able to make changes to the ground floor while it is being leased.
6. Even if the appellant were able to make changes at ground level, the NIA also recommends that a rubber mat, 200mm of concrete and acoustic battens are added to the floor separating the public house from the proposed flat. This would appear to involve relatively substantial changes to the separating level which would add a good deal of weight to the floor. Limited evidence has been provided to show if the building is structurally capable of accommodating these works. Given the extent of the alterations necessary, this is a relevant consideration in determining whether the proposed mitigation represents a practical solution to managing noise levels.
7. While the GDPO does not regulate the internal layout of converted properties, paragraph MA.2(2)(d) is aimed at controlling the impacts of noise from commercial premises. Without clear evidence that the proposed mitigation could be fully implemented, I am unable to determine with any certainty that noise in the proposed flats could be successfully managed.
8. I am also mindful of the Council's point that the NIA does not assess the impact of structural borne sound. The appellant does not respond to these concerns in any great detail and this casts further doubt as to whether noise from the public house would be fully mitigated.

#### *Transport impacts*

9. In order to ensure that the development would be car-free, the appellant has provided a signed Unilateral Undertaking which aims to prohibit any future occupiers of the proposed flats from obtaining a parking permit. While this potentially addresses the Council's second reason for refusal, I have not considered the Unilateral Undertaking any further as I am dismissing the appeal for other reasons.

#### **Conclusion**

10. I appreciate that the appellant has successfully developed flats above other public houses. However, there are inevitably differences between the exact circumstances of each case.
11. For the reasons given above, I conclude that the proposed change of use is not permitted by the GPDO. The appeal is therefore dismissed.

*C Cresswell*

INSPECTOR