



Appeal Decision

Site visit made on 1 April 2025

by N Teasdale BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th April 2025

Appeal Ref: APP/J4525/W/25/3358379

First Floor, 24 Holmeside, Sunderland SR1 3JE

- 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) (GPDO).
 - The appeal is made by Mr Roman Islam against the decision of Sunderland City Council.
 - The application Ref is 24/01919/PCM.
 - The development proposed is described as, *'conversion first floor to 2 independent flats'*.
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. Under Article 3(1) and Schedule 2, Part 3, Class MA of the GPDO, development is permitted consisting of a change of use of a building and any land within its curtilage from a use falling within Class E (commercial, business and service) to a use falling within Class C3 (dwellinghouses) subject to limitations and conditions.
3. Paragraph MA.2. (2) sets out that before beginning development under Class MA, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to amongst other matters, (d) impacts of noise from commercial premises on the intended occupiers of the development.
4. In that context, the main issue is whether the proposed development would be permitted by Article 3, Schedule 2, Part 3, Class MA of the GPDO with regard to impacts of noise from commercial premises on the intended occupiers of the development.

Reasons

5. The appeal site relates to a mid-terraced two storey property which fronts onto the footpath of Holmeside which is a busy commercial street in the city centre. There are a number of retail, food and drinking establishments nearby, including a nightclub/live music venue known as Independent located two properties away at No's 27-28 Holmeside.
6. The proposed development seeks the change of use from Commercial, Business and Service (Use Class E) to Dwellinghouses (Use Class C3). The proposed space is to create 2 no. 1 bed apartments.

7. As set out, the Independent which is a nightclub/live music venue is located within very close proximity of the appeal site being approximately 15 metres away and has late night operating hours of 11:00pm and 04:00am and so is likely to impact upon potential occupiers during nighttime hours. Additionally, the site is located above and adjoined to food businesses which could also impact occupiers of the appeal site.
8. Significant noise associated with the Independent would be generated within the street at late evenings/early mornings when residents would be sleeping. Such would be linked to customers queuing/congregating within the street below the front façade of the appeal site. There are loading bays to the front of the Independent and the appeal site which are likely to be used as pick up/drop off points causing noise disturbances for future occupiers.
9. A Noise Impact Assessment has been submitted which measured existing noise levels. The results being that fixed closed acoustic windows with enhanced glazing are recommended with an alternative whole dwelling ventilation system as well as installing noise insulation measures into the flooring and party walls. Such a suggestion regarding fixed closed windows is not desirable given the lack of choice for occupiers to open their windows, demonstrating that the site is unsuitable for a residential dwelling.
10. The maximum noise levels (LAFmax) inside dwellings during the nighttime period (11:00pm - 07:00am) should be no higher than 45 dB LAmax to prevent sleep disturbance. *'Table 2 – Sound Level Results Summary'* within the Noise Assessment states that 87dB LAFmax was recorded at the location of MP1 during nighttime hours. Similarly, 75dB LAFmax was recorded at MP2. It is unclear what noise source these LAFmax levels can be attributed to and whether a glazing scheme would be sufficient to mitigate against such levels. Should such levels frequently occur during nighttime hours they would likely lead to occupiers complaining of excessive noise from the music venue.
11. Additionally, I have had due regard to the response from the Music Venue Trust which confirms that the events captured during the survey was a concert at just over half capacity and in the smaller of the two live rooms, and a DJ event in the small room. The Trust claim that the assessment was not representative of a typically busy or loud event to the larger of their operating capacities. Whilst I appreciate that it is not possible to account for every eventuality given the nature of the use and methodologies used, this does demonstrate the challenges of allowing occupiers to reside in such close quarters of this existing use where the levels of noise can indeed fluctuate and be difficult to control. Thus, careful consideration must be taken.
12. Overall, it is likely that the development would result in future occupants being adversely impacted by noise, to the detriment of their amenity. This would likely lead to occupiers complaining of excessive noise from the Independent which could result in demands for intervention to restrict the operations of the Independent which would be contrary to paragraph 200 of the National Planning Policy Framework (the Framework) relating to the 'agent of change'. This would still be the case even if residents were aware of the proximity of the Independent prior. This is because future occupiers would unlikely know the full extent to which the impact of noise would have on their quality of life until they are occupying the property and have experienced this. The appellant has suggested a planning

condition to deal with potential noise impacts from adjoining commercial uses. However, given my findings above, I do not find a condition to be appropriate in this instance.

13. My attention has been drawn to other examples within the city where the Council has recently accepted fixed closed windows, including 110-112 High Street. Whilst the decision notice has been provided, I have no further context regarding the specific details of this application and how it was determined to be able to comment fully on. This is the same for the former HSBC, Fawcett Street including its discharge of conditions application.
14. My attention has also been drawn to approved residential units close to the live music venue including No's 20 and 23 Holmeside and 31-32 Blandford Street. However, the Officer's report associated with No's 20 and 23 explain that a noise assessment was submitted with the mitigation measure being acceptable and subject to conditions. Such detail is not before me and thus I am unsure of what measures were required. Additionally, the schemes are different, and these properties are a further distance from the venue unlike the appeal site. In terms of 31-32 Blandford Street, this is located to the rear of the appeal property, a further distance from the Independent. I am unsure of the specific context of that street when the application was determined other than being surrounded by shops and businesses. I note from the Officer's report that concerns were raised regarding potential impacts of nighttime noise on potential residents. An acoustic scheme was therefore applied as a condition, but specific details of the concerns raised are limited. Overall, I do not find such schemes to be directly comparable and in any event, I have determined this appeal based on its own merits. The presence of fixed windows and residential units elsewhere in the city would not be a sufficient reason to justify harmful development.
15. For the reasons given above, I conclude that the proposed development would fail to meet the criteria set out at paragraph MA.2. (2) (d) under Class MA of Part 3 to Schedule 2 of the GPDO as amended with respect to impacts of noise from commercial premises on the intended occupiers of the development. I have taken into account Policy HS2 of the Sunderland City Council Core Strategy and Development Plan 2015-2033, 2020 (CSDP) and the Framework relating to the control of noise only in so far as they relate to the prior approval matters. Given I have concluded that future occupiers would be unduly harmed by noise from commercial premises, then the proposal would conflict with Policy HS2 of the CSDP and the Framework.
16. I am aware of other local and national policies relating to various matters including boosting the supply of homes although this would not alter my findings in relation to the above main issue as the proposed development would still fail to meet the criteria set out at paragraph MA.2. (2) (d) under Class MA of Part 3 to Schedule 2 of the GPDO as amended with respect to impacts of noise from commercial premises on the intended occupiers of the development.

Conclusion

17. For the reasons given above, I conclude that the appeal is dismissed.

N Teasdale

INSPECTOR