



Appeal Decision

Site visit made on 20 May 2025

by V Goldberg BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd July 2025

Appeal Ref: APP/Q1445/W/24/3354306

Norwood House, 9 Dyke Road, Brighton BN1 3FE

- 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 Mr T Clapham of DTA Property Holdings Ltd against the decision of Brighton and Hove City Council.
 - The application Ref is BH2024/01489.
 - The development proposed is the change of use of first, second and third floors from offices (Class E) to 6no flats (Class C3).
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for an award of costs has been made against Brighton and Hove City Council. This is the subject of a separate decision.

Preliminary Matter

3. The top of the Council's decision notice refers to Part 3, Class O of the General Permitted Development Order, rather than Class MA. Given that the reason for refusal, officer's report, Council's statement of case and appellant's case all correctly refer to Class MA, the appeal will be determined on this basis.

Background and Main Issue

4. Class MA of the GPDO permits 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).
5. Paragraph MA.1 of Class MA sets out requirements that the proposal must satisfy to qualify for prior approval. The Council considers that the development complies with the requirements set out in this paragraph. Based on the evidence before me, I see no reason to disagree.
6. However, Paragraph MA.2 details that development under Class MA is permitted subject to an application to the local planning authority for a determination as to whether prior approval is required in relation to the conditions set out in Paragraph MA.2(2). One of these conditions MA.2(2)(d) relates to impacts of noise from commercial premises on the intended occupiers of the development. The Council's decision relates to this condition, as prior approval was refused on the basis that

insufficient information was provided to demonstrate that future residents of the proposed development would not suffer from unacceptable noise and disturbance from the adjoining live music venue.

7. The Council considered that the development complied with the other conditions set out in Paragraph MA.2(2) and based on the evidence before me, there is no reason to disagree. As such, there is no need to give them further consideration in this decision.
8. Accordingly, the main issue is whether the proposal would be permitted development under Class MA, with regard to whether the proposal would satisfy condition MA.2(2)(d), with reference to the impacts of noise from commercial premises on the intended occupiers of the development.

Reasons

9. The appeal site contains a three storey terraced building which adjoins and shares a party wall with 11 Dyke Road, a live music venue. Due to the appeal building being taller than No 11, there is no physical attachment to No 11 on the top half of the second floor and third floor.
10. The submitted Commercial Noise Survey and Noise Impact Assessment Report (CNSNIAR) concludes that the transmission of amplified music from 11 Dyke Road could be adequately controlled to minimise the likelihood of noise disturbance to future occupants. This assessment is based on a noise survey conducted on Friday 5th April 2024 whereby at points within the building, music and background noise levels were recorded for several minutes.
11. The results of this survey are limited as the assessment took place with no involvement from the venue, readings were taken on one day, details of the performance at the venue are not included, and there is no assessment of external noise levels. This is significant given that on the date of the survey, the live artists finished at 22.30, when the venue has a licence until 5am. Additionally, testing on one day would not account for diverse types of music that could have different noise outputs. Accordingly, it is likely that the survey is not representative of a worst case scenario.
12. An earlier Noise Assessment (NA) accompanied a previous application and took place on Friday 3rd November 2023, this provides additional information to the CNSNIAR. This too has limitations as on the day of the survey, the live act finished at 11pm. Despite this, this survey identifies both external noise and noise from the venue arising from structureborne vibration re-radiating as sound via the party wall, and airbourne sound via a partially open door at the rear of the venue. Accordingly, despite limitations, both reports identify a need to mitigate the detected transmission of amplified music from 11 Dyke Road.
13. The CNSNIAR specifies that noise sensitive habitable rooms would need to be fully isolated from the base building structure in a “box in box” construction to provide suitable mitigation. This would include independent secondary glazing. This arrangement suggests that windows would need to be closed for the system to be effective. The appeal statement refers to the secondary glazing being required on the external facades, which would therefore apply to all windows. Whilst the appellant considers that the report does not infer that existing windows

would need to be closed to mitigate external environmental noise, the need for all windows to be secondary glazed would be contrary to this claim.

14. Given that all windows would need to be shut to provide effective noise mitigation, the proposed units would need an alternative means of ventilation to provide adequate living conditions for future occupants. This is because it would be unreasonable for these flats to have no means of ventilation, especially in warm weather conditions. This appears to be acknowledged by the appellant, as the appeal statement advises that alternative ventilation would be incorporated. However, details of alternative ventilation have not been supplied and therefore it has not been demonstrated that the proposed units can provide effective noise mitigation whilst also providing acceptable living conditions for future occupiers. Even if mechanical ventilation could be provided, this would not overcome the reasonable expectation for future occupiers to be able to open windows at night without being subjected to unacceptable levels of noise arising from the music venue.
15. With reference to noise arising from congregating customers, two areas have been identified, the pavement area on Regent Row directly outside the venue and the terrace to the rear. The appellant considers that there are existing residential areas that are close to these areas, which do not benefit from significant acoustic mitigation, and therefore the impact on these properties would be worse. However, the acoustic properties of these sites are not before me and in any event, unlike the appeal building, they do not adjoin the music venue. In addition, it has not been sufficiently demonstrated that the proposed mitigation would be effective at mitigating the impact of noise from the adjoining commercial premises.
16. Whilst the Environmental Health Officer has not objected to the proposal as a consultee, the comments clearly reflect the need for the effectiveness of the proposed systems to be demonstrated to the LPA.
17. Reference is made to a prior approval application approved at 12A and 14 Imperial Arcade¹ whereby the Council did not object to noise disturbance from the adjoining music venue. However, this site has a different relationship to 11 Dyke Road compared to the appeal building. This is because the appeal building shares a party wall and has windows that face directly onto the pavement to the front of the venue and its terrace, whereas the Imperial Arcade site is located to the rear of Norwood House and has less attachment to the music venue and the outside areas that are used for customers to congregate.
18. The appellant refers to the unlawful use of the terrace at the music venue and the noise levels emanating from it therefore being irrelevant. Even if the noise from the terrace is not considered, this would not address the noise arising from the transmission of amplified music from 11 Dyke Road.
19. Despite proposed mitigation, the proposal would not satisfy condition MA.2(2)(d) of Class MA in regard to the impacts of noise from commercial premises on the intended occupiers of the development, and prior approval should not be given. On the evidence before me, this is a matter which could not be mitigated by conditions. This is because it has not been sufficiently demonstrated that the noise surveys on which the mitigation is designed to address are representative of a

¹ BH2024/01617

worst case scenario, nor has it been demonstrated that effective noise mitigation can provide acceptable living conditions for future occupiers.

Other Matters

20. Reference is made to a deed of easement being secured between the applicant and the owner of the music venue. This would seek to prohibit nuisance claims to ensure the music venue can continue to operate in its current form. However, such an agreement would not be secured through the planning process.

Conclusion

21. For the reasons given above and taking into account all matters raised, the appeal is dismissed.

V Goldberg

INSPECTOR