



Appeal Decision

Site visit made on 22 July 2025

by K Lancaster BA (hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 August 2025

Appeal Ref: APP/H5390/W/25/3362763

Units 1 and Unit 2, 191A Askew Road, London W12 9AX

- 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 Marson Askew Limited against the decision of the Council of the London Borough of Hammersmith and Fulham.
 - The application Ref is 2024/02980/PMA56.
 - The development proposed is the change of use of building at ground floor (part), 1st floor (part), 2nd floor, 3rd floor, and 4th floor from Class E to 21 flats (15 x 1b/1 person, 5 x 1b/2 person and 1 x 2b/3 person).
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. A Planning Obligation by way of a Unilateral Undertaking (UU) made under Section 106 of the Town and Country Planning Act 1990 (as amended) has been submitted with this appeal. This relates to securing the removal of the ability for future residents to apply for parking permits with the exception of blue badge holders. I return to this matter below.
3. The appeal submission includes additional evidence which was not before the Council at the time of its decision. This includes a Noise Assessment Technical Note, Revised Phase 1 Desk Study and supporting letter, and a Daylight and Sunlight Report supporting letter. The Procedural Guide states that it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought.
4. I have considered this additional information taking into consideration the principles established by the Courts in *Holborn Studios Ltd*¹. In this case, the additional information provides further evidence in relation to the Council's reasons for refusal, rather than significant amendments to the proposal. For this reason, I consider that there would be no prejudice to any party, and I have therefore determined the appeal on the basis of this additional information.
5. A Fire Statement Form has also been submitted with the appeal. The Council have confirmed that this satisfies the fifth reason for refusal in respect of fire safety.

¹ *Holborn Studios Ltd v The Council of the London Borough of Hackney* [2017] EWHC 2823 (Admin)

Background and Main Issues

6. Class MA of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (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).
7. Development under Class MA is permitted subject to, amongst other aspects, 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.
8. Prior approval was refused by the Council on the grounds that the proposed development failed to provide an appropriate mechanism to the removal of the ability for future residents to apply for parking permits with the exception of blue badge holders to mitigate its effects on transport, failed to provide adequate information in respect of the contamination risks on site, demonstrate that adequate natural light would be provided to all habitable rooms and failed to demonstrate that the impacts of noise from commercial premises could be adequately mitigated.
9. Therefore, the main issue is whether the proposal would fall within the provisions of permitted development under Schedule 2, Part 3, Class MA of the GPDO, with particular regard to:
 - the impacts of noise from commercial premises on the intended occupiers of the development;
 - whether there would be adequate provision of natural light to all habitable rooms of the proposed dwelling;
 - the contamination risks on site; and
 - the transport impacts of the development, particularly to ensure safe site access.

Reasons

10. The appeal site comprises part of a five-storey commercial building, situated on Askew Road, a busy distributor road. It is currently in use and is occupied by Gravity Media. The surrounding area is a mix of commercial and residential uses along Askew Road, with residential streets such as Davisville Road and Percy Road close by.
11. The proposal seeks to change to the use of part of the ground and first floors, together with the second, third and fourth floors to provide twenty-one apartments.

Noise

12. Condition MA2.(2)(d) requires an assessment of the impacts of noise from commercial premises on the intended occupiers of the development.
13. Based on the submitted plans, part of the ground and first floor of the building would be retained in commercial use, although the exact use is not specified. There are also a number of other commercial uses within the appeal buildings and close to the appeal site. In connection with these uses, there is various plant and

equipment situated on the roof of the building, which is not under the control of the appellant.

14. The proposal was supported by an Environmental Noise Survey and Noise Impact Assessment² to assess the likely impacts on the future occupiers of the proposed dwellings. However, the Council's Environmental Health Officer concluded that it had not been demonstrated that sufficient mitigation would be provided to ensure the future occupiers would not be unacceptably impacted by noise.
15. The appeal is further supported by a Technical Note³ which indicates that the measured external noise levels can be suitably mitigated to achieve internal ambient noise levels compliant with the noise level criteria detailed in BS8233 through the use of suitably specified glazing and ventilation systems. However, no specific details have been provided.
16. Class MA does not permit external alterations to the building. Therefore, in the absence of details of the measures that would be required, I cannot be certain that the noise impacts of the adjacent uses could be adequately mitigated.
17. 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.

Natural Light

18. Class MA.2.2(f) requires an assessment as to whether there would be adequate provision of natural light to all habitable rooms of the proposed dwelling. Paragraph X defines habitable rooms as *"any rooms used or intended to be used for sleeping or living which are not solely used for cooking purposes, but does not include bath or toilet facilities, service rooms, corridors, laundry rooms, hallways or utility room"*.
19. There is no such definition as to what is meant by natural light. However, I consider that natural light encompasses both daylight and sunlight. The proposal is supported by an Internal Daylight and Sunlight Report⁴ (the DSR) which indicates that adequate daylight would be provided to each of the proposed flats. However, it also indicates that inadequate sunlight would be provided to all of the units.
20. In respect of sunlight, the BRE Guidelines⁵ state that a dwelling will appear reasonably sunlight provided at least one main window faces 90 degree of due south and a habitable room, preferably a main living room, can receive a total of at least 1.5 hours of sunlight on 21 March. It is not disputed that all of the proposed dwellings would be single aspect, with approximately 38% being solely north facing. The DSR indicates that approximately 56% of the units would receive sufficient sunlight exposure, meaning that a significant proportion would not.
21. I have had regard to Paragraph 130(c) of the National Planning Policy Framework (the Framework) which states that a flexible approach should be taken in applying guidance relating to daylight and sunlight, where they would otherwise inhibit making efficient use of a site (as long as the resulting scheme would provide

² Prepared by Quantum Acoustics (Ref: QA24065/NIA) dated 1 July 2024

³ Prepared by Quantum Acoustics (Ref: QA24065) dated 23 January 2025

⁴ Prepared by Point 2 Surveyors Ltd (Ref: 3584 v1) dated 1 July 2024

⁵ Site layout planning for daylight and sunlight – A guide to good practice, dated 2022

acceptable living standards). However, whilst applying the guidance flexibly, regard must also be had to whether or not the proposed development would provide adequate living conditions for its future occupants. Furthermore, Paragraph W.2(a) of Part 3 and Paragraph B.9 of Part 20 states that prior approval must be refused in relevant applications if adequate natural light is not provided in all the habitable rooms of the dwellinghouse.

22. Consequently, it has not been demonstrated that the proposed development would provide adequate natural light to the habitable rooms of the proposed dwellings. Therefore, the proposed development would not comply with Condition MA.2(2)(f).

Contamination Risks

23. Class MA.2.(2)(b) requires an assessment of the contamination risks on site. The evidence provided indicates that there is potential for contamination to exist on site due to its historic use as a factory and the presence of a diesel generator and chemical store on-site.
24. In this regard, the application was supported by a Phase 1 Desk Study⁶. A revised Phase 1 Desk Study Rev A⁷ accompanies the appeal and seeks to address the Council concerns in relation to the completeness of the assessment. The Study identifies that the risks to the site are Moderate/Low to Very Low, with the need for a Phase 2 Site Investigation including a ground gas assessment, alongside the continuation of a Non-Specialist Watching Brief during groundworks.
25. Whilst the main parties disagree as to the wording of potential conditions, given the nature of the development proposed, I am satisfied that the contamination risks on site could be adequately addressed through the imposition of suitably worded planning conditions. However, as I am dismissing the appeal for other reasons, I have not considered this matter further.

Transport Impacts

26. Class MA.2.(2)(a) requires an assessment of the transport impacts of the development, particularly to ensure safe site access.
27. The site has a PTAL rating of 2 with on-street parking in the area restricted on both Askew Road and the adjoining residential streets. As such, the proposed dwellings could lead to greater on-street parking stress. On this basis, it is not disputed that the proposed development should be car-free. However, the Council's refusal reason sets out that this should be secured by a legal agreement, which was not provided with the application. The appellant considers that this could also be secured by imposition of a planning condition.
28. Nonetheless, 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. Whilst the Council has confirmed that this would address their first reason for refusal, I have not considered this matter any further as I am dismissing the appeal for other reasons.

⁶ Prepared by Lustre Consulting dated September 2024.

⁷ Prepared by Lustre Consulting dated 10 March 2025.

Other Matters

29. It is not disputed that the proposed development would comply with conditions MA.2.(2)(c) relating to flood risk, MA.2.(2)(e) relating to conservation areas, MA.2.(2)(g) relating to heavy industry, waste management, storage and distribution and MA.2.(2)(h) related to registered nursery/health care provision. The proposed dwellings would also comply with the Nationally Described Space standards. Nonetheless, compliance with these requirements does not alter my above findings.

Conclusion

30. For the above reasons, I conclude that the proposal would not be permitted development under Schedule 2, Part 3, Class MA of the GPDO having regard to impacts of noise from commercial premises on the intended occupiers of the development, and provision natural light to all habitable rooms. Therefore, the appeal should be dismissed.

K Lancaster

INSPECTOR