
Appeal Decision

Site visit made on 29 April 2025

by **David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 21 August 2025

Appeal Ref: APP/U5360/W/24/3355841

51-53 Ridley Road, London E8 2NP

- 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 GPDO).
 - The appeal is made by Mr Ziser of Rainbow Properties against the decision of the Council of the London Borough of Hackney.
 - The application Ref is 2024/1580.
 - The development proposed is Prior Approval (Class MA) to change use of part of second floor of building from commercial, business and service use (Class E) to 7 x self-contained residential units.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Mr Ziser of Rainbow Properties against the Council of the London Borough of Hackney. This application is the subject of a separate Decision.

Background and Main Issues

3. The Council considers that the appeal site is within an area covered by an Article 4 Direction which removes the permitted development right which forms the basis of the proposal. There is a dispute as to the area covered by this Article 4 Direction and whether it includes the appeal site.
4. Although the Council considers that the permitted development right has been removed for the appeal site, it has identified a further reason for refusal based on Condition MA.2(2)(a) of Class MA in respect of parking pressure and an absence of a suitable undertaking to secure that the occupiers of the new residential units would not be able to apply for on street parking permits.
5. Furthermore, having regard to comments raised on the proposal and my own observations, I identified a further main issue in respect of the impacts of noise from commercial premises on the intended occupiers of the development with reference to Condition MA.2(2)(d) of Class MA. Both main parties were given the opportunity to respond on this issue and I have had regard to the comments made.
6. On the basis of the above, the main issues in this appeal are:
 - Whether the proposal benefits from the Class MA permitted development right;
 - The transport impacts of the development; and

- The impacts of noise from commercial premises on the intended occupiers of the development.

Reasons

Whether Permitted Development

7. The Article 4 Direction covers an area which Schedule 2 of that Direction states applies to "*The land shown hatched in red on the attached plan being land comprising Hackney's Central Activities Zone, City Fringe and Dalston and Hackney Central Town Centres*". The land shown in red on the attached plan does not include the appeal site, although the boundary is along Ridley Road immediately to the south of the appeal site. When read on its face, the Article 4 Direction does not cover the appeal site.
8. The Council states that the areas referred to in the Direction are defined in the Hackney Local Plan, and in particular the Dalston and Hackney Central Town Centres which it considers includes the appeal site. However, there is nothing in the Direction that states that these areas are defined elsewhere. The Council contends that one can look at extrinsic material to resolve ambiguity in the wording of Schedule 2 and the plan of the Direction. But there is no ambiguity within the Direction as the boundary is clearly defined on the attached plan. It would not be reasonable that an applicant or other interested party has to seek out a separate unnamed document to confirm the extent of the Direction when it is clearly depicted within the document itself.
9. Based on the evidence before me, the appeal site is not within the boundary of the Article 4 Direction, and therefore benefits from the Class MA permitted development right. In accordance with the provisions of the GPDO I will now consider the prior approval matters raised in respect of Condition MA.2(2) of Class MA.

Transport Impacts

10. As set out in the appellant's Transport Statement, Ridley Road is a two-way road with the street pedestrianised (between 6am and 8pm Monday through Saturday) west of St. Marks Rise to facilitate the Ridley Road market. There is no parking along Ridley Road in the immediate vicinity of the appeal site due to the market
11. However, on-street parking is available in nearby streets and based on what I have seen and read there is ongoing parking pressure in this area. The appeal site is in a location with excellent access to services and facilities by sustainable means of transport, and the level of car ownership of residents of the appeal proposal is likely to be relatively low. However, there is a significant possibility that some residents of the proposal could own vehicles which could add to parking stress.
12. The Council sets out that this could be addressed by a planning obligation to ensure that occupiers of the new residential units would not be able to apply for parking permits. This would also include fees for the modification of the traffic order and the Council's review and monitoring costs. The appellant suggests this could be addressed by a planning condition, and has provided 2 alternative conditions as used in planning permissions granted elsewhere.

13. However, the *Brent*¹ condition seeks to prevent occupiers of a development obtaining parking permits. Access to parking permits is not something that can be directly controlled through planning legislation. The issue of permits is the responsibility of highway authorities and subject to Traffic Regulation Orders or Traffic Management Orders. It will therefore be the traffic order within a controlled parking area which will specify which properties are eligible to apply for permits rather than a planning condition.
14. The *Tower Hamlets*² condition also refers to a scheme to secure the occupation of the development as car free. Although this negatively worded condition refers to a 'scheme', in effect this contemplates the execution of a planning obligation as required by the Council including the provision of fees. The Planning Practice Guidance advises that a negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases. Although the *Tower Hamlets* condition is pre-occupation rather than pre-commencement, the PPG sets out that ensuring that a planning obligation is entered into ahead of any grant of planning permission provides certainty for all parties about what is being agreed. On that basis I consider that the provisions of the PPG applies equally to pre-occupation conditions.
15. In exceptional circumstances a negatively worded condition may be appropriate, where there is clear evidence that the delivery of the development would otherwise be at serious risk, and this may apply in the case of particularly complex development schemes. But there is nothing before me to suggest that such exceptional circumstances apply in the appeal before me or that the development is particularly complex.
16. In the absence of a mechanism to secure car-free development and the resultant effect on parking stress in the area, I conclude that the development would lead to unacceptable transport impacts. Although the proposal would provide safe access to the site, this does not outweigh the wider transport impacts. The proposal would therefore not accord with condition MA.2(2)(a) of Class MA of Schedule 2, Part 3 of the GPDO.
17. The proposal would therefore conflict with the National Planning Policy Framework (the Framework) with regards to promoting sustainable transport. Insofar as they are relevant to this main issue, the proposal would not comply with the transport and parking impact considerations of Policies T1 and T4 of the London Plan 2021 and Policies LP43 and LP45 of the Hackney Local Plan 2020.

Noise

18. The proposed flats would be located on the uppermost floor of the building and would face onto Ridley Road.
19. The appellant has submitted a Noise Impact Assessment³ (NIA) which concludes that the proposal would meet the recommended internal noise levels provided in BS8233⁴ to protect the proposed habitable spaces from external noise intrusion,

¹ Brent Council Application No: 20/1244

² Tower Hamlets Application Number: PA/23/00337

³ KP Acoustics - Noise Impact Assessment Report 25919.NIA.01

⁴ British Standard BS8233:2014 "Sound insulation and noise reduction for buildings".

subject to mitigation measures including an upgraded floor construction and secondary double glazing.

20. However, objections to the proposal refer to noise from an adjacent bar. A planning permission provided by the appellant indicates that this bar was granted permission in 2011 subject to a number of conditions, including hours of operation between 07:00 am and 02:00 am Monday to Saturday, and 09:00am to 23:00 on Sundays and Bank Holidays. This enables includes opening hours early in the morning and late at night where activity associated with the bar may affect residents of the appeal proposal.
21. The operator of the bar refers to noise from a busy outdoor area. The appellant emphasises that a condition on the planning permission for the bar prevents the external area to the rear being used as an amenity or smoking area. However, the description of the development on the planning permission for the bar refers to the erection of decking to the front of the premises, and it has not been demonstrated that the appellant's noise evidence adequately addresses noise from customers to the front of the bar.
22. The appellant's NIA was based on internal and external monitoring⁵ carried out overnight from a Wednesday to a Thursday. However, I am mindful that the bar is likely to be busiest at weekends with a commensurate increase in potential noise and disturbance. The appellant's noise survey does not include this busier period, and I therefore consider that it does not represent a robust assessment of noise generated by the adjacent bar. The noise monitoring was also undertaken in January, and activity outside the bar is likely to be of a greater intensity in the summer months.
23. Comments raised on the proposal query how ventilation will be provided for the proposed single aspect flats. If residents were to open their windows to provide ventilation, this would significantly reduce the effectiveness of the proposed secondary glazing, with subsequent harm to the living conditions of residents due to noise both from the bar as well as from the adjacent market. Given the lack of alternative methods of ventilation, it is reasonable that residents of the proposal could expect to open their windows to access fresh air. The negative effect that this would have on the proposed noise mitigation measures adds to my concerns on the proposal.
24. Moreover, the noise levels in BS8233 used in the NIA apply to noise without a specific character, previously termed "anonymous noise". Occupants are usually more tolerant of noise without a specific character than, for example, that from neighbours which can trigger complex emotional reactions. The noise associated with the bar would have a specific character including the voices and other noise from customers using the decking to the front of the bar, as well as noise and disturbance from the comings and goings of customers including those queuing to access the premises. Noise of a specific character would also be generated by the market, including from customers and stallholders and the setting up of the market stalls. On that basis, I do not consider that the noise levels of BS8233 referred to by the appellant are appropriate in this instance.

⁵ Internal Noise Survey between 15:53 on 11/01/2023 and 13:13 on 12/01/2023. External noise surveys between 14:54 on 11/01/2023 and 15:28 on 12/01/2023.

25. With regard to amplified music, the appellant has provided further evidence⁶ which includes a letter⁷ from a qualified noise consultant regarding a 'Sound System Calibration'. This letter was submitted in response to a condition on the planning permission for the bar requiring the submission of a report in respect of noise levels and measures to minimise noise. The appellant's further evidence applies the criteria used in the calibration letter to the appeal proposal, albeit with a revised background noise level to reflect the most recent noise survey. This predicts that the noise levels remain well below relevant background thresholds, indicating that the proposed residential living conditions would be acceptable. Based on the evidence before me, as long as the bar is operating in accordance with the conditions placed on the planning permission, noise from amplified music within the bar would not harm the living conditions of residents of the proposal.
26. The building in which the proposal is located shares a wall with the adjacent bar, and there is therefore some potential for structure borne noise being transmitted from the bar. However, the proposed flats would be located on the top floor of the building and would not share a wall with the adjoining bar. Given this arrangement and the proposed mitigation measure of an enhanced separating floor, I do not consider that structure borne noise or vibration would have an unacceptable impact on residents of the proposal.
27. Notwithstanding my conclusions in respect of amplified music from within the bar and structure borne noise, I conclude that the impacts of noise from commercial premises would lead to significant harm to the living conditions of future residents. The proposal would therefore not accord with condition MA.2(2)(d) of Class MA of Schedule 2, Part 3 of the GPDO. The proposal would not comply with the Framework which seeks to avoid noise giving rise to significant adverse impacts on quality of life and achieve a high standard of amenity for users of development.

Conclusion

28. For the reasons given above the appeal should be dismissed.

David Cross

INSPECTOR

⁶ KP Acoustics Ref: 25919.250516.L1

⁷ Dated 9 November 2011