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## ENCLOSURE 7

APPEAL REF : APP/H5390/W/17/3192243  
FIRST TO FOURTH FLOORS BROOK HOUSE  
229-243 SHEPHERDS BUSH ROAD LONDON W6 7AN

ENCLOSURE 7



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## Appeal Decision

Site visit made on 4 April 2018

**by Darren Hendley BA(Hons) MA MRTPI**

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

**Decision date: 24<sup>th</sup> April 2018**

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**Appeal Ref: APP/H5390/W/17/3192243**

**First to Fourth Floors, Brook House, 229-243 Shepherd's Bush Road, London W6 7AN**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) Order 2015 (as amended).
  - The appeal is made by Legal & General Property Ltd against the decision of the Council of the London Borough of Hammersmith & Fulham.
  - The application Ref 2017/00707/PD56, dated 22 February 2017, was refused by notice dated 18 July 2017.
  - The development proposed is the change of use of the first, second, third and fourth floor levels from offices (Class B1) into 30 (10 x 1 bed and 20 x two bed) self-contained flats (Class C3).
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### Decision

1. The appeal is allowed and approval is granted under the provisions of Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order(GPDO) 2015 (as amended) for the change of use of the first, second, third and fourth floor levels from offices (Class B1) into 30 (10 x 1 bed and 20 x two bed) self-contained flats (Class C3) at First to Fourth Floors, Brook House, 229-243 Shepherd's Bush Road, London W6 7AN in accordance with the terms of the application Ref 2017/00707/PD56, dated 22 February 2017, and the plans submitted with it, subject to the following conditions:
  - 1) Prior to commencement of the development hereby permitted a scheme for protecting the intended occupiers from the impacts of noise from commercial premises shall be submitted to and approved in writing by the Local Planning Authority. All works which form part of the scheme shall be completed before the development hereby permitted is occupied and retained thereafter.
  - 2) The development hereby permitted shall not be occupied until provision for the storage of 40 cycles has been made within the basement level as per the approved drawing D 0100 Rev P4 and retained thereafter.
  - 3) Prior to commencement of the development hereby permitted a Construction Logistics Plan shall be submitted to and approved in writing by the Local Planning Authority. The details shall include the numbers, size and routes of construction vehicles, provisions within the site to ensure that all vehicles associated with the construction works are

properly washed and cleaned to prevent the passage of mud and dirt onto the highway, and the traffic management matters to be agreed. The approved details shall be implemented throughout the construction period.

### **Procedural Matters**

2. Schedule 2, Part 3, Class O of the GPDO permits development consisting of a change of use of a building and any land within its curtilage from a use falling within Class B1(a)(offices) of the Schedule to the Use Classes Order, to a use falling within Class C3(dwellinghouses) of that Schedule.
3. Development under Class O of the GPDO is permitted subject to the condition that before beginning the development, 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 regards the transport and highways impacts of the development; contamination risks on the site; flooding risks on the site; and impacts of noise from commercial premises on the intended occupiers of the development.
4. The sole matter in dispute is the impacts of noise from commercial premises on the intended occupiers of the development.
5. Since the Council of the London Borough of Hammersmith & Fulham Council determined the prior approval application, the Hammersmith & Fulham Local Plan (2018) (LP) has been adopted. The policies contained within the LP have replaced those in the Development Management Local Plan (2013) which are referred to in the Council's reason for refusal. In the interests of fairness, the Council and the appellant were given the opportunity to comment on this matter. I have considered the appeal on the basis of the policies in the LP, but only insofar as they relate to the matters that can be considered under Class O of the GPDO.

### **Main Issue**

6. The main issue is, therefore, whether the proposal would provide adequate living conditions for its intended occupiers by way of the impacts of noise from commercial premises.

### **Reasons**

7. The appeal property comprises of a 5 storey building. The ground floor of the premises is mainly retail units, with the 4 floors above given over to the offices. A basement area provides car parking. The site is located on one of the main thoroughfares into Hammersmith town centre and is located reasonably centrally. In the vicinity of the site there are predominantly commercial uses, although some residential uses are also apparent.
8. As there is the potential for the intended occupiers to experience noise from commercial premises, due to the location of the appeal property, noise impact assessment reports (NIAs) prepared by the appellant were before the Council at the time of its decision. These concerned both commercial noise from the ground floor uses and, more broadly, from uses in the area, including a number of restaurant and bars. Internal mitigation measures were also considered. Essentially, the NIAs conclude that due to the high background levels of noise from road traffic, noise from commercial premises would not be so apparent as

to have a significant impact on the living conditions of the intended occupiers. At worst, the NIAs conclude that the noise impact from commercial premises on the proposal would be low.

9. Class O of the GPDO concerns noise from (my emphasis) commercial premises. I consider this means the noise must emanate from the commercial premises. Whilst I accept this includes noise from the associated servicing and from customers, in my mind, this does not stretch so as to include more indirect sources of traffic noise such as from people and vehicles being attracted to a commercial centre, or using one of its main thoroughfares. I see no compelling evidence that when the GPDO was amended to account for noise from commercial premises, this was also intended to cover such a broad range of traffic use.
10. Clearly traffic is a significant component in noise in this location and did the appeal concern an application for planning permission, the consideration of noise would not be restricted to that which would emanate from commercial premises. However, as the appeal relates to an application for prior approval, what can be considered in the assessment of noise is more limited. In this regard, the survey work which is reported in the NIAs was undertaken at the retail premises on the ground floor, and at 3 bars and restaurants close by. The surveys also reported noise from deliveries, customers outside these establishments, and from inside when the doors were open. These constitute a fair representation of the commercial premises and typical activities that would cause related levels of noise in the area.
11. The Planning Practice Guidance (PPG): Noise recognises that the subjective nature of noise means that there is not a simple relationship between noise levels and the impact on those affected. Therefore, it is also important to consider the effect of the characteristics of the noise. The PPG sets out that a contributory factor includes non-continuous sources. This is of relevance to the proposal because of the intermittent nature of the noise that would be likely to arise from the commercial premises. The NIAs, though, do account for when noisier activities occurred at the commercial premises that were surveyed. I also observed from my site visit there appeared to be limited external areas related to nearby commercial premises where associated noise could emanate from.
12. The Council has raised concerns that the time of the year when the survey work was carried out was not representative of busier times when there may be more noise emanating from shops, restaurants and bars. However, the surveys were carried out over a weekend period in May which is sufficiently representative of likely noise conditions at most times of the year so as to provide dependable results and at a time of the week when the occupants would be more likely to be at home. I am not persuaded that accounting for events that occur only once a year such as at Christmas would substantially inform the assessment as the proposal would likely be occupied throughout different times of the year.
13. Taking these matters together, and based on what I can consider, I find no reason to disagree with the scope and the conclusions of the NIAs which have being undertaken.
14. Paragraph W of the GPDO permits conditions reasonably related to the subject matter of the prior approval. I consider that as there would be a predicted

noise impact, albeit low at worst, and mitigation is raised in the NIAs, a condition related to noise mitigation would be reasonable. The appellant has indicated that such measures would be internal to the building, although they are not before me and this would be a matter for the appellant and the Council, when such measures are submitted for subsequent approval.

15. The Council has stated that where residential development has been approved in the area this was subject of planning permission, with conditions to ensure an adequate noise environment. Whilst this appeal concerns a prior approval, as I have set out above, I have applied a condition concerning the mitigation of noise from commercial premises.
16. I conclude the proposal would provide adequate living conditions for its intended occupiers by way of the impacts of noise from commercial premises. As such, it would comply with Policies HO11 and CC11 of the LP which state that noise insulation and layout to minimise noise nuisance between dwellings will be taken into account, that noise impacts will be controlled through noise sensitive development located in the most appropriate locations, and that housing will not normally be permitted where the occupants/users would be affected adversely by noise, with exceptions only made if it can be demonstrated that adequate mitigation measures will be taken.

### **Conditions**

17. With regard to paragraph W of the GPDO, in addition to the condition concerning noise mitigation, I have imposed conditions concerning cycle parking and construction traffic management, in the interests of highways safety and the free flow of traffic, as they relate to the transport and highway impacts of the development.
18. I also require details to be submitted pre-commencement where these matters need to be addressed at the start of the implementation of the proposal concerning noise mitigation and construction traffic management. Where I have altered the wording of these conditions put forward by the Council, I have done so in the interests of precision, without changing their overall intention. I have not imposed a condition concerning flood prevention and mitigation measures as the Flood Risk Assessment concludes that these are not necessary.
19. Conditions that effectively seek to prevent the intended occupiers applying for an on-street parking permit would not be reasonable given the PPG advises that only in exceptional circumstances should a negatively worded condition requiring a planning obligation or other agreement be entered into, citing more complex and strategically important development, which the proposal would not constitute. I also have no evidence before me concerning the parking stress in the area and, moreover, off-street car parking is proposed to be provided.
20. The GPDO also imposes standard conditions for each class of permitted development. This includes those relating to commencement and that the development should be carried out in accordance with the submitted details.

### **Conclusion**

21. For the reasons given above and having regard to all matters that have been raised, I conclude that the appeal should be allowed and prior approval

granted. In granting approval, the appellant should note that O.2. (2) of the GPDO states that development under Class O is permitted subject to the condition that it must be completed within a period of 3 years starting with the prior approval date.

*Darren Hendley*

INSPECTOR