



ALLEN PLANNING Ltd  
Town Planning and Development Consultants

# Planning, Design & Access Statement

Permission for:

Variation of condition No 3 of Prior Notification Permission reference 22/0577 granting the change of use from Class E (commercial, business and service) to C3 (dwelling houses) to comprise 6 flats. Prior Notification under Class MA, Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015.

Site at 175 Friar Street  
Reading  
Berkshire  
RG1 1HE

August 2024

## **1.0 Introduction**

1.1 This Planning Statement has been prepared by Allen Planning Ltd on behalf of the site owner to support an application submission for the variation of condition no.3 imposed upon the grant of a prior notification permission under LPA reference 22/0577.

1.2 Turning to condition No. 3 imposed upon this consent this stated:

*“3. No development hereby permitted shall commence on site until a detailed scheme, informed by an assessment of the current noise environment, for protecting the dwellings from the external noise environment of the area has been submitted to and approved, in writing, by the Local Planning Authority. The scheme itself shall be designed, specified and constructed so that the sound insulation performance of the structure and the layout of the dwellings are such that the indoor ambient noise levels do not exceed the values detailed in Table 4 of BS 8233:2014 and the and that the individual noise events do not exceed 45 dB LA,max,F more than 10 times a night. Where opening windows will lead to an internal noise level increase of 5 dBA or greater above BS 8233:2014 recommended internal levels, the scheme shall include provision of alternative mechanical ventilation with minimum performance equivalent to a mechanical heat recovery (MVHR) system with cool air bypass as an alternative means of cooling and ventilation. Noise from the system should not result in BS8233 internal levels being exceeded.*

*Thereafter, the development shall not be carried out other than in accordance with the approved scheme which shall be completed before any part of the accommodation hereby approved is occupied, unless the Local Planning Authority otherwise agrees in writing.”*

1.3 The reason for the imposition of this condition was in order to safeguard the amenity of occupants in accordance with Policies CR6 and CC8 of the Reading Borough Local Plan 2019

1.4 On the basis of the above it is proposed to amend the condition to:

*None of the apartments here by approved shall be occupied until such time as the recommendations of the noise impact assessment received by the LPA on the.....August 2024 have been fully incorporated into each and every approved apartment and thereafter the development shall not be carried out other than in accordance with the approved scheme unless the Local Planning Authority otherwise agreed in writing with the LPA*

1.5 The Noise Impact Assessment referred to in this proposed revised condition is submitted with this application as Appendix AP1.

1.6 This Statement sets out the revised matters of noise attenuation and thereby residential amenity and the implications of such in accord with the policies of the Reading Local Plan and the guidance of the revised NPPF where relevant.

## **2.0 Legislation**

2.1 The basis of recent case law a section 73 application is only concerned with amending the conditions of a planning permission namely that the purpose of this section of the Act is to give “relief against one or more conditions”.

2.2 On that basis the description of development may not be considered as part of that exercise and therefore, the description may not be altered either explicitly or via a condition in a section 73 application.

- 2.3 It is on this basis this s73 application does not seek in any manner to alter the description of the development as approved by the LPA.
- 2.4 Furthermore, Section 73 of the Town & Country Planning Act (The Act) can be used to vary conditions imposed by a General Development Order (such as the GPDO).
- 2.5 The appropriate case law on this issue is the case of *Pressland v. London Borough of Hammersmith and Fulham* [2016] EWHC 1763 (Admin) which was itself an application concerning the applicability of s73 TCPA to a Class O prior approval.
- 2.6 The High Court ruled that s73 of the Act was not limited to express grants of permission by planning authorities, but was also applicable to conditions imposed on grants of prior approval as set out below:

*“For the reasons given an application may be made under section 73 of the 1990 Act for the development of land without complying with conditions subject to which a previous planning permission was granted by a development order. Those conditions include those subject to which any prior approval required under the development order was granted.”*

- 2.7 The case of *Pressland* was cited, with approval, by the Court of Appeal in *R (Fulford Parish Council) v City of York Council* [2020] PTSR 152 and I am not aware of any authority which departs from it and accordingly it can be regarded as good law.
- 2.8 In addition therefore we submit that it is entirely open to the LPA to amend the condition as requested through this application as it would not constitute a variation of the operative part of the permission (and would therefore accord with the principles that apply to the exercise of section 73 TCPA as set out for example in the case of *Armstrong v Secretary of State* [2023] EWHC 176).

### **3.0 Site Location (overview)**

- 3.1 The site is not a listed building but does lie within the Conservation area.
- 3.2 The site is highly sustainable being within the heart of the town centre with access to several local bus services, as well as being located in close proximity to Reading Station, but has no off street car parking.
- 3.3 The site does not lie within an area at risk of flooding (Flood Risk Zone 1) and is only partially at low-medium risk from surface water flooding within the existing public walkway.
- 3.4 The building is currently vacant and in a poor state of repair. It is understood that the building was constructed in the 1950s, following bomb damage from World War II, and the site now comprises of a vacant retail unit at ground floor which in its majority does not form part of this prior notification consent and also a further three floors of vacant office accommodation above which do.
- 3.5 The street frontage of the building is shown in Figure 1 below.



Figure 1 – Street Frontage

#### 4.0 Relevant Planning Policy

- 4.1 The planning policy relevant to this application under s73 are those relating to noise and residential amenity.

##### NPPE

- 4.2 Securing a good standard of amenity for all existing and future occupants of land and buildings is one of the core principles of the NPPE (see paragraph 135f).
- 4.3 When considering potential noise disturbance, the revised NPPE at paragraph at 180 advises:

*“180. Planning policies and decisions should contribute to and enhance the natural and local environment by:*

*e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air and water quality, taking into account relevant information such as river basin management plans;*

- 4.4 Paragraph 191 adds:

*“191. Planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should:*

*a) mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life”*

## Reading Local Plan

- 4.5 The two policies quoted in the reason for the imposition of the condition are set out below:

### **CC8: SAFEGUARDING AMENITY**

*Development will not cause a detrimental impact on the living environment of existing residential properties or unacceptable living conditions for new residential properties, in terms of:*

- ☐ Privacy and overlooking;*
- ☐ Access to sunlight and daylight;*
- ☐ Visual dominance and overbearing effects of a development;*
- ☐ Harm to outlook;*
- ☐ Noise and disturbance;*
- ☐ Artificial lighting;*
- ☐ Vibration;*
- ☐ Dust and fumes;*
- ☐ Smell;*
- ☐ Crime and safety; or*
- ☐ Wind, where the proposals involve new development of more than 8 storeys.*

*The position of habitable rooms, windows and outdoor living spaces will be particularly important. A back-to-back distance of 20 metres between dwellings is usually appropriate, although the circumstances on individual sites may enable dwellings to be closer without a detrimental effect on privacy.*

*As well as immediate impacts, other aspects to which this policy applies will include matters such as hours of operation of businesses, and effects of traffic movements, particularly of heavy goods vehicles (HGVs). Proposals which would generate regular movements of HGVs on residential roads will not be acceptable.*

*Where an otherwise acceptable development could change its character to a use that would have a greater impact on amenity without needing planning permission, conditions will be applied to restrict such changes.*

### **CR6: LIVING IN CENTRAL READING**

*Proposals for residential development within the central area will be assessed against the following criteria:*

*i) All proposals for residential development within the central area will be required to contribute towards a mix of different sized units within the development. This will be measured by the number of bedrooms provided within individual units. Ideally, a mixture of one, two and three bedroom units should be provided. As a guide, in developments of 15 dwellings or more, a maximum of 40% of units should be 1-bed/ studios, and a minimum of 5% of units should be at least 3-bed, unless it can be clearly demonstrated that this would render a development unviable.*

*ii) Proposals for new residential development within the central area will be required to demonstrate how the issue of potential noise disturbance from neighbouring land uses and other sources, and air quality implications of residential development, have been considered and if necessary, mitigated. New residential development should not be located next to existing town centre uses where those uses would give rise to unacceptable levels of noise and disturbance to the occupiers of the new scheme, unless this can be mitigated.*

*iii) In meeting the requirement to provide affordable housing, in the central area an over-concentration of social renting for single persons will be avoided.*

*iv) Where proposals for serviced apartments and apart-hotels fall outside the C3 use class, they will be located within the Central Core. Such proposals will not be permitted unless the duration of occupation of residents is restricted, to ensure the units are used on a short stay basis and not as residential flats, and information monitoring the implementation of this restriction is regularly supplied."*

## **5.0 Issues**

- 5.1 Given the form of this application it is submitted that these proposals raise material considerations pursuant to matters of potential impacts of future occupiers in terms of potential noise disturbance.
- 5.2 This section 73 application, seeking as it does the variation to condition number three imposed upon a prior notification permission for change of use to residential, can only take into account matters of land use noise, it cannot seek to introduce other matters outside of the scope of permitted development such as for example traffic noise or matters of appropriate ventilation.
- 5.3 On that basis the judgement of the impact of residents in terms of noise disturbance in assessing this condition can only relate to those matters which fall within the scope of the original assessment of permitted development.
- 5.4 In this respect Part MA of the GPDO, and indeed the former Part O, identifies that decision makers can only assess in terms of the impacts of noise from commercial premises on the intended occupiers of the development.
- 5.5 Whilst it is noted that the condition as imposed required the submission of a noise impact assessment prior to the commencement of the development approved it is noteworthy that it is only upon "prior to first occupation" that any such agreed mitigation measures are required to be in situ.
- 5.6 This latter element of the condition is of course sensible because there is no material harm created from noise nuisance until there is a resident within the scheme.
- 5.7 On that basis we submit that the variation of the condition proposed to require any noise mitigation details to be in place prior to the first occupation of any of the apartments would still retain control for the LPA in terms of such matters and importantly would not place any incoming residents with potential harm through noise because any mitigation measures would have to be in place prior to the first resident occupying a flat.
- 5.8 Secondly a detailed noise impact assessment has been undertaken for the development and in terms of the facades these are slightly different. As can be seen from the noise impact assessment the vast majority of any noise generated to the front facade is by vehicle traffic and passers-by and not by any matters of land use.
- 5.9 As we have set out earlier in this statement those are matters which are not material to the consideration of a prior notification consent, and thereby any condition imposed upon it. On this basis the fenestration within the front facade of the building is entirely acceptable to meet internal noise levels both through the day and night.
- 5.10 The rear facade however has potential noise impacts from various equipment associated with buildings at the rear of the site and such in our opinion would constitute a potential "land use noise nuisance".
- 5.11 The rear facade has been assessed within the noise impact assessment which concludes that the fenestration proposed, incorporating acoustic trickle ventilation, would be

satisfactorily to provide an acceptable internal living environment both through the day and night for residents whose apartments would face the rear of the site.

5.12 In light of the above the recommendations of the Noise Impact Assessment are set out below:

- 7.0.1 The use of the suggested configuration specification in section 6 will allow the proposed site to meet the regulations for acoustic performance in accordance with BS8233:2014, both to the front and the rear of the building. The front of the building has a high rating for the glazing. The noise levels to the front of the building are predominantly from local road traffic and pedestrian traffic only.
- 7.0.2 Any outdoor spaces to the rear of the proposed development, that are not currently part of the designs provided to the author, would need some basic mitigation measures. This is because the area is currently 2dBA above the BS8233:2014 limit value of 55dBA  $L_{Aeq,10hr}$ . This can be achieved through fencing and/or the addition of absorptive materials to the area, as it is currently a concreted open space.
- 7.0.3 The existing plant noise to the rear of the property, accompanied by the proposed glazing and ventilation plan, will also mean that the site fully conforms to the specified BS4142:2104 standard and provide a low chance of adverse impact.
- 7.0.4 Since writing the report, JosTec have learnt that glazing has already been installed at the site. Information provided to JosTec for the installed glazing shows the rear windows achieve 35dB which meets the requirements as outlined in table 8 of this report but the front windows only achieve 33dB which is 2dB short of the required glazing specification.
- 7.0.5 In order to get around this, the client is proposing to install secondary glazing to the window in order to achieve the sound rating. The client proposes to fit a frame or using a magnetic strip within the existing glazed areas to install a further sheet of 4mm Plexiglass. JosTec have been able to model this up using Insul software. With a minimum 3mm air gap prior to installing the Plexiglass, this brings the front façade rating up to  $R_w$  36dB, which would then make the front glazing acceptable as outlined in Table 8 of this report. Please see appendix E for Insul calculation.

5.13 On this basis it is confirmed that the existing fenestration within the upper floors of this building both in terms of its front and rear facade would deliver sufficient mitigation in terms of potential noise disturbance from those matters which are relevant and material to a prior notification proposal and its subsequent conditions.

5.14 Indeed, even *in extremis* if one were to take into account traffic noise from vehicles and passers-by in terms of the front facade of the building then appropriate noise mitigation could be achieved through the provision of secondary glazing with acoustic trickle ventilation which would not alter the external appearance of the building in anyway.

5.15 In overview therefore the proposed wording of the condition would require that the recommendations of the accompanying noise impact assessment are carried out fully prior to the occupation of the first apartment and as such all incoming residents will be provided with adequate noise attenuation to the individual flats.

## **6.0 Conclusion**

6.1 It is submitted that the amendment sought through this section 73 application is entirely lawful given the case of *Pressland* and others.

6.2 This application thereby seeks a variation of the condition imposed upon this permission TO:

*None of the apartments here by approved shall be occupied until such time as the recommendations of the noise impact assessment received by the LPA on the.....August 2024 have been fully incorporated into each and every approved apartment and thereafter the development shall not be carried out other than in accordance with the approved scheme unless the Local Planning Authority otherwise agreed in writing with the LPA*

6.3 This wording would require any necessary mitigation to be provided prior to the occupation of any approved unit and as such the reason for the imposition of the original condition would be retained namely to protect the residential amenity of future residents in accordance with the development plan.

**6.4 In light of the above the Local Planning Authority are asked to grant planning permission for the variation of condition No. 3 imposed on this approved development as proposed within this section 73 application.**