

Ref.: TC/3682

23 October 2024

Mr I Berry  
Planning & Building Control  
Tameside Metropolitan Borough Council,  
Clarence Arcade,  
Stamford Street,  
Ashton-under-Lyne,  
Tameside,  
OL6 0GA

**Application:** 24/00907/FUL

**Site:** 1 Onward Street Hyde Tameside SK14 1HW

**Proposal:** Change of use from office into 1no. self contained ground floor flat

## **Remit:**

Theatres Trust is the national advisory public body for theatres. We were established through the Theatres Trust Act 1976 'to promote the better protection of theatres' and provide statutory planning advice on theatre buildings and theatre use in England through The Town and Country Planning (Development Management Procedure) (England) Order 2015, requiring the Trust to be consulted by local authorities on planning applications which include 'development involving any land on which there is a theatre'.

## **Comment:**

This application has been brought to the attention of Theatres Trust because it is seeking planning permission for change of use to residential within a building directly adjacent to the rear of Hyde Festival Theatre. The two buildings are in close proximity. The site is also next door to the former Theatre Royal Hyde which is

### **Theatres Trust**

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currently in use as a place of worship and community centre.

Development of this nature is of great concern to Theatres Trust because residential uses and noise-generating cultural venues including theatres are not necessarily compatible. Residential uses have the potential to generate negative impacts on theatres and their operations which can be detrimental to their ability to function should new restrictions, or the threat of restrictions, be imposed. In turn the established activities of theatres, and those which it could legitimately and reasonably introduce in future, are likely to cause disturbance to future occupants leading to sub-optimal living conditions. It is therefore essential that potential impacts are fully understood.

Our comments are particularly in relation Hyde Festival Theatre as this remains an active theatre, although some of the same issues will also relate to Masjid at Tawheed next door within the former Theatre Royal Hyde. That site remains on our Theatres at Risk register and is potentially capable of being reverted to performance use in the future, therefore we are keen to ensure that development does not compromise that prospect.

Hyde Festival Theatre is an important community theatre serving Hyde and its local catchment, run by members and volunteers. It opened in its present form in 1953 following substantial redevelopment of an earlier cinema, coinciding with the Festival of Britain from which the theatre takes its name. The theatre's programme largely consists of productions by local groups. It contains a main auditorium of around 230 seats and a secondary studio with a capacity of around 80. The nature of this theatre's operation gives it particular community, social and cultural value because it enables engagement and participation and the development of skills. It will also bring people into the town centre which boosts footfall and spend amongst local businesses. It makes a great contribution towards the social and cultural well-being of local people. Paragraph 97 of the NPPF (2023) seeks planning decisions to plan positively for facilities of this nature and to avoid unnecessary loss.

The application site is within Class F1 use and this change of use relates to a part of that building which has been used as an office. It covers all of the ground floor, the rear of which includes a bedroom which is just a few metres from the back of the respective theatres.

That proximity means there is potential for bleed of sound and possibly vibrations from performances as well as rehearsals and late night or early morning 'get-ins/get-

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outs' (the delivery and removal of sets and equipment) which could cause disturbance to future occupants. This issue has been identified by the Council's Environmental Services officer within their advice submitted on a previous application.

Managing this for future residents by introducing new restrictions on hours of work and sound levels at the theatre would not be acceptable because it would add cost and operational limitations which would significantly harm the venue's reputation and viability, making it unattractive as a venue to which producers and local groups would wish to bring their shows. In turn this would reduce access to culture and the arts for local people and extinguish the social and economic benefits outlined above.

These issues can and have resulted in harmful restrictions and uncertainty being imposed where complaints have been received. At worst this has resulted in the complete closure of venues, particularly prior to legislation and planning policy in this respect being introduced in recent years. Our general position therefore is to object to such development unless there is compelling evidence to the contrary and sufficient mitigations are robustly conditioned and within legal agreements. Such conditions must extinguish all reasonable doubt the existing venue would be affected and that living conditions would not be compromised.

Policy at national and local level supports and protects facilities such as theatres and states that development should be refused where acceptable living conditions cannot be reached. Paragraph 193 of the NPPF (2023) seeks to ensure that new development can be effectively integrated with existing facilities (the 'agent of change' principle) and makes clear unreasonable restrictions on existing uses should not be introduced. It also makes clear that obligations to make development acceptable must fall to the applicant/developer rather than existing operations. Policy H10(d) of the Tameside Unitary Development Plan (2004) states that in the design of housing there should be no unacceptable impact on the amenity of neighbouring properties.

The current submission consists of just an application form with existing and proposed floorplans. Despite proximity of the theatre being identified within recent previous withdrawn and refused/invalid applications there is no assessment of the relationship between the proposed development and the theatre. There is no acoustic/noise impact assessment. The undertaking of one would be highly beneficial and in the applicant's interests because it would identify sources of noise (and

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potentially vibrations) and guide what mitigations are necessary, if indeed the development can be acceptable at all. We recommend that such work is undertaken in cooperation with the Festival Theatre and the neighbouring Masjid so that it can measure general and 'worst-case' scenarios, for example the loudest of live music shows and events with significant bass. Without such assessment this application should not be permitted.

There are now a number of decisions and judgements in favour of protecting the interests and operations of existing noise-generating venues over introducing new potentially incompatible residential development such as that proposed within this application. Examples include:

- An Inquiry in late 2020 in which Theatres Trust participated (APP/Q3115/W/20/3249052 & APP/Q3115/Y/20/3249055) which upheld refusal of planning permission and listed building consent by South Oxfordshire District Council for residential development adjoining Wallingford Corn Exchange due to unacceptable living conditions and risk to the activities of Wallingford Corn Exchange.
- A dismissed appeal in 2019 at 20 King St, Wakefield where the appellant sought to overturn refusal of Prior Approval under Class O of the GPDO. The sole issue was whether the proposed development would provide acceptable living conditions for future occupants with regard to noise. The appeal site was next to the Inns of Court public house, licensed to host live music every night. It was concluded by the Inspector that there was a realistic prospect of the proposal disadvantaging an existing business due to complaints of statutory noise nuisance from residents.
- A larger Prior Approval scheme in 2019 for twenty-one residential units above the 1000 Trades music venue in Birmingham reflected the outcome of the Wakefield case two months previous.
- An appeal at 6 Eagle Parade in Buxton in 2020 was dismissed, relating to a full planning permission for change of use to residential use at the rear of the Coco Nightclub. The unit subject to planning condition itself only became vacant as a result of noise complaints from an adjoining residential property. As with the

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Wakefield and Birmingham cases, the Inspector concluded living conditions would be unacceptable due to noise and disturbance.

- A noise abatement order was served against the Star Inn by Guildford Borough Council following complaint by the developer of residential units next door. The order was subsequently quashed at Guildford Magistrates Court on July 1<sup>st</sup> 2019 but in the meantime the venue could not operate as it should have been able to.
- In March 2024 there was resolution of a long-running and high-profile legal case involving the Night & Day venue in Manchester. A noise abatement order issued by Manchester City Council was amended in favour of the venue, but it was still hit by additional costs due to the need to install noise limiters. The development from which complaints were submitted had been permitted prior to relevant policy coming into effect.
- Relevant examples to go before the Courts are Cemex (UK Operations) Ltd v Richmondshire District & Anor [2018] EWHC 3526 (Admin), albeit that case related to industrial noise rather than from a cultural venue, and Obar Camden Ltd v LB Camden [3] in relation to notable music venue and former theatre Koko.

These examples should afford the Council confidence that refusal of this application on the basis of noise and 'agent of change' concerns, if required, can be justified and successfully defended.

As this application currently stands we would strongly object to the granting of planning permission. This is because the proposed development is contrary to relevant policies on 'agent of change' and has failed to demonstrate compatibility with the theatre in terms of noise or provision of appropriate living conditions for occupants. Therefore the future operation of Hyde Festival Theatre as a community, cultural and social asset would be jeopardised.

In the event the Council is minded to grant permission against our advice despite such clear conflict with policy, and in the absence of sufficient information and assessment by the applicant, we ask that we are notified in advance of a decision notice being issued (or of a date that the application will be considered by Committee). It is essential that robust conditions are attached requiring approval of sufficient acoustic and design protections, and that the applicant or future developer

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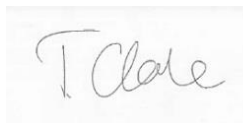
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must be responsible for any costs arising whether to the application site or to the theatre. Theatres Trust can advise and work with Tameside Metropolitan Borough Council on drafting appropriate wording for any conditions or agreements.

Additionally, construction activity itself poses a risk to the theatre's performances and operations. Whilst this is necessary in delivering new development we urge a condition to be in place requiring submission of a construction management plan agreed with the theatre. This would prevent intrusive works taking place during normal performance times to ensure shows and the experience of audiences is not negatively impacted. Again, having had experience of such conditions elsewhere, we can provide the Council with advice.

Please contact us if we may be of further assistance or should you wish to discuss these comments further.



Tom Clarke MRTPI

National Planning Adviser

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