

Ref.: TC/3682

29 October 2024

Ollie Thomas
Shropshire Council

Application: 24/03384/FUL

Site: Frankwell Quay Warehouse Frankwell Quay Shrewsbury Shropshire

Proposal: Change of use and upward extension to provide a restaurant at ground floor, 6 residential units on the 1st and 2nd floor and 3 duplex apartments within a new 3rd and 4th floor

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:

Thank you for consulting Theatres Trust on this application for planning permission. We have been notified because the development site proposes residential use and is located directly adjacent to Theatre Severn, in particular proximity to the theatre's get-in and fly tower.

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

Theatres Trust

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Chair Dave Moutrey OBE

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should new restrictions, or the threat of restrictions, be imposed. In turn the established activities of theatres, and those which could legitimately and reasonably be introduced in future, are likely to cause disturbance to future occupants leading to sub-optimal living conditions.

Theatre Severn is an important theatre serving Shrewsbury and its wider regional catchment, with a mixed programme including touring productions, comedy, live music and talks. It contains a main auditorium and a secondary 250-seat theatre along with dance studio and hospitality space. It also provides an all-day food and drink offer, further enhancing its role as a cultural and community asset by encouraging additional visitors who may then engage with its cultural offer. The theatre makes a great contribution towards the social and cultural well-being of local people, as well as providing important economic benefits by drawing in visitors. 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 currently vacant and this has been the case for a prolonged period; it was originally a warehouse which had most recently been used as an antiques market, restaurant and café. Streetview images suggest these had ceased operating by 2009. Theatre Severn is separated from the application site by just a relatively small void along the theatre's eastern elevation, within which is part of the theatre's fly tower and back of house facilities. The north/north-west elevation of the application site is directly next to the theatre's 'get-in' and 'get-out' (its servicing bay for the delivery and removal of sets and equipment) which it overlooks. This will particularly adversely impact 'Apartment 1' which is the proposed residential unit of greatest concern.

By necessity, particularly with touring shows which quickly move onto other locations around the country, these activities often take place late at night, early in the morning and at weekends. Much of Theatre Severn's programme works on that basis. By its nature this can be an unavoidably noisy undertaking. Managing this for future residents by introducing restrictions on hours of work would not be acceptable because it would mean Theatre Severn being unable to accept shows. This would cause significant harm to the venue's reputation and viability as it would make it unattractive to producers and touring artists, in turn reducing access to culture and the arts for local people. It would also be detrimental for Shrewsbury economically because the theatre generates visitors to the town which boosts town centre footfall and generates linked spend in local businesses and services.

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Furthermore, the proximity of the building in general to the fly tower means there is also potential for some bleed of noise and possibly vibrations from performances as well as rehearsals which could additionally cause disturbance particularly to Apartments 3, 6 and 9.

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 in place which extinguishes all reasonable doubt that existing venues may be affected and that living conditions would not be compromised.

Policy at national 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 should not be placed on them. It also makes clear that obligations to make development acceptable must fall to the applicant/developer rather than existing operators.

Presently there is no proper assessment of the relationship between the proposed development and the theatre, and we consider the submitted Noise Impact Assessment Report to be flawed and insufficient. The report has identified the main noise sources impacting the development to be from the road/local traffic and from mechanical plant at the theatre, along with patrons and music from the proposed ground floor restaurant/bar within the development. It has completely ignored operational noise from the theatre, in particular get-in activities, but also any noise/vibrations from performances. We also understand from the theatre that on the dates the assessment was undertaken (2-5th August) there was no relevant activity taking place. Therefore it cannot be ascertained what mitigations such as soundproofing may be required to make development acceptable, or if development would be acceptable at all.

We similarly note an absence of such matters within the Planning Statement, with reference to the theatre limited only to its designated town centre location and design/townscape issues within pre-application advice.

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To address our concerns a fresh acoustic survey should be undertaken, ensuring it reports on sound and vibration levels at various sensitive receptors within the development arising from different types of activities at the theatre including those which cause greatest disturbance. It would be advantageous for this to be coordinated with Theatre Severn. Without such assessment this application should not be permitted. The applicant might also consider revising the layout of the development, removing Apartment 1 which appears to be particularly problematic and giving that space over to the commercial bar/restaurant.

There are now a number of decisions and judgements in favour of protecting the interests and operations of existing venues over introducing potentially incompatible 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 Corn Exchange's activities.
- 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 for twenty-one residential units above the 1000 Trades music venue in Birmingham reflected the outcome of the Wakefield case two months previous.
- In 2020 an appeal at 6 Eagle Parade in Buxton 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 the application itself only became vacant as a result of noise complaints from an adjoining residential property. As with the Wakefield

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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 1st 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.

Those 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 future occupants. The future operation and viability of Theatre Severn as a community, cultural and social asset would therefore 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.

If permission is to be granted it is essential that robust conditions are attached requiring approval of sufficient acoustic and design protections, and that the

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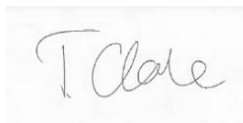
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applicant or future developer must be responsible for any costs arising whether to the application site or to the theatre. Theatres Trust can advise and work with Shropshire Council on drafting appropriate wording for any conditions or agreements.

Additionally, construction activity itself poses a risk to the theatre's performances and operations. Whilst this is a necessary activity in delivering new development we urge inclusion of a planning condition 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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