

Agenda Item A6	Committee Date 16 October 2017	Application Number 17/00770/RCN
Application Site 23-25 North Road Lancaster Lancashire LA1 1NS	Proposal Phased change of use and conversion of bar, nightclub and shop (A1/A4) to student accommodation comprising 32 studios, one 3-bed, two 5-bed cluster flats (C3), four 7-bed, two 8-bed and one 9-bed cluster flats (sui generis) and gym area with associated internal and external alterations, erection of two 2-storey rear extensions, associated landscaping and car parking and Relevant Demolition of existing rear extensions (pursuant to the removal of condition 18 on planning permission 16/00274/FUL to remove the need to undertake pre-occupation noise monitoring)	
Name of Applicant Mr Trevor Bargh	Name of Agent Mr Richard Barton	
Decision Target Date 26 September 2017	Reason For Delay Committee Cycle /Officer Workload	
Case Officer	Mr Mark Potts	
Departure	No	
Summary of Recommendation	Approval – Subject to the amended wording of condition 18	

1.0 The Site and its Surroundings

- 1.1 The site is located on the northern fringes of Lancaster City Centre in the Waring and Gillow's Showroom building, which is a 19th Century Grade II listed building of coursed, dressed sandstone with ashlar dressings. Its original use was as furniture showrooms and offices constructed in 1882 and altered in the 20th Century, and was in active use for furniture sales and manufacture until its closure in 1962. Until recently the property accommodated the Livingwoods furniture store, however, since the application was last presented to Committee in December 2016 they have sought alternative premises. The premises have also been used recently as a nightclub and bar (in a number of different guises). The site is located to the east of North Road and is bound by other buildings to the north-east (including The Yorkshire House pub) and a further building to the south west. To the east lies the Sugarhouse Nightclub and beyond this the Grade II Listed St Leonards House. To the west is North Road with a car park beyond this.
- 1.2 The proposal sits within the Lancaster Conservation Area (Canal Corridor North character area) and within the Central Lancaster Heritage Action Zone, and the Gillows building is Grade II Listed. The site falls within Flood Zone 2 and sits within the Lancaster Air Quality Management Area.

2.0 The Proposal

- 2.1 A proposal for the phased change of use of the Grade II Listed Waring and Gillow's Showroom to student accommodation was approved by the Planning Committee on 12 December 2016. Whilst the development has yet to commence, the applicant is applying to remove condition 18 attached to

planning permission 16/00274/FUL. This condition relates to pre-occupation noise monitoring to ensure the approved acoustic mitigation measures meet the anticipated standards.

- 2.2 The applicant has stated that the condition does not meet the relevant tests as set out at Paragraph 206 of the National Planning Policy Framework (NPPF), and is limiting the ability of the development to attract bank funding. The application therefore argues that as a consequence the applicant cannot proceed with the development approved. In addition to the current planning application, the applicant has lodged an appeal with the Planning Inspectorate against the imposition of condition 18 on the extant planning consent (16/00274/FUL). The applicant has requested that the appeal is determined by means of Public Inquiry and an application for costs has been made as part of the appeal process. Whilst the appeal has been lodged, at the time of writing this report, the start letter (from the Planning Inspectorate) has yet to be received by the Local Planning Authority. Therefore there is, as yet, no confirmation of the dates of this appeal or the appeal method.

3.0 Site History

- 3.1 The relevant site history is noted as below:

Application Number	Proposal	Decision
16/00274/FUL	Phased change of use and conversion of bar, nightclub and shop (A1/A4) to student accommodation comprising 32 studios, one 3-bed, two 5-bed cluster flats (C3), four 7-bed, two 8-bed and one 9-bed cluster flats (sui generis) and gym area with associated internal and external alterations, erection of two 2-storey rear extensions, associated landscaping and car parking and Relevant Demolition of existing rear extensions	Approved
16/00275/LB	Listed building application for internal and external alterations to facilitate the phased change of use and conversion of bar, nightclub and shop (A1/A4) to student accommodation comprising 32 studios, one 3-bed, two 5-bed cluster flats (C3), four 7-bed, two 8-bed and one 9-bed cluster flats (sui generis) and gym area, erection of two 2-storey rear extensions and demolition of existing rear extensions	Approved

4.0 Consultation Responses

- 4.1 The following responses have been received from statutory and non-statutory consultees:

Consultee	Response
Environmental Health	Initially objected to the removal of the condition. The rationale for the inclusion of condition 18 was that in this particular case, due to the design of the development and the extensive use of glazing at its technical limit in controlling low frequency sound, this necessitated the inclusion of condition 18. Following further consideration (and in light of the legal opinion and the amended condition proposed), No Objection is raised. Whilst this amended condition is not what Environmental Health initially intended (which was to ensure that acceptable sound levels were achieved) they believe that the re-worded condition will offer a satisfactory level of control and reassurance that the internal sound limits can be controlled to acceptable levels.
Lancaster University Students Union	Object to the removal of the condition: <ul style="list-style-type: none"> The condition was previously considered to pass the relevant tests; Pre-occupation conditions are utilised in the case of Manchester; and The pre-occupation noise monitoring condition enables the Council to enforce that compliance in what all parties have conceded to be a complex and difficult case. The Manchester guidance endorses a pre-occupation monitoring condition and on this basis LUSU consider that the application be refused.

5.0 Neighbour Representations

- 5.1 To date there has been **589** letters of objection received based predominantly on the following reasons::
- Unacceptable risk to student welfare, and may lead to complaints arising from the future occupiers of the building;
 - The loss of the Sugarhouse would negatively impact on the offering made by the University;
 - There is already a decline in the pubs and clubs in the city;
 - Casts doubts as to whether the developer can truly develop the building to the required standards; and,
 - It was resolved previously to include the planning condition and therefore the condition should not be removed.
- 5.2 Councillor Lucy Atkinson objects to the removal of the condition given the condition safeguarded the operation of the Sugarhouse.

6.0 Principal National and Development Plan Policies

6.1 National Planning Policy Framework

Paragraph 12 and 14 – Presumption in favour of Sustainable Development
Paragraph 17 – Core Principles
Paragraphs 56, 58, 61, 64 – Good Design
Paragraph 69 – Promoting healthy communities
Paragraph 123 - Noise
Paragraph 203-206– Use of Planning Conditions

6.2 Local Planning Policy Overview

At the 14 December 2016 meeting of its Full Council, the local authority resolved to undertake public consultation on:

- (i) The Strategic Policies and Land Allocations Development Plan Document (DPD); and,
- (ii) A Review of the Development Management DPD.

This enabled progress to be made on the preparation of a Local Plan for the Lancaster District. Public consultation took place from 27 January 2017 to 24 March 2017. Whilst the consultation responses are currently being fully considered, the local authority remains in a position to make swift progress in moving towards the latter stages of: reviewing the draft documents to take account of consultation outcomes, formal publication and submission to Government, and, then independent Examination of the Local Plan. If an Inspector finds that the submitted DPDs have been soundly prepared they may be adopted by the Council, potentially in 2018.

The **Strategic Policies and Land Allocations DPD** will replace the remaining policies of the Lancaster District Core Strategy (2008) and the residual 'saved' land allocation policies from the 2004 District Local Plan. Following the Council resolution in December 2016, it is considered that the Strategic Policies and Land Allocations DPD is a material consideration in decision-making, although with limited weight. The weight attributed to this DPD will increase as the plan's preparation progresses through the stages described above.

The **Review of the Development Management DPD** updates the policies that are contained within the current document, which was adopted in December 2014. As it is part of the development plan the current document is already material in terms of decision-making. Where any policies in the draft 'Review' document are different from those adopted in 2014, and those policies materially affect the consideration of the planning application, then these will be taken into account during decision-making, although again with limited weight. The weight attributed to the revised policies in the 'Review' will increase as the plan's preparation progresses through the stages described above.

6.3 Draft Strategic Policies and Land Allocations DPD

EN3 – Central Lancaster Heritage Action Zone

6.4 Development Management DPD

DM35 – Key Design Principles
DM46 – Accommodation for Students
Appendix D – Purpose Built and Converted Shared Accommodation
Appendix F- Studio Accommodation

6.5 Lancaster District Core Strategy (adopted July 2008)

SC1 – Sustainable Development
SC5 – Quality in Design

6.6 Other Material Considerations

Noise Policy Statement for England
National Planning Practice Guidance
BS8233: 2014 Guidance on Sound Insulation and Noise Reduction for Buildings
World Health Organisation: Guideline for Community Noise
NANR45 Low Frequency Noise Criteria
Manchester City Council Noise Guideline
Professional Practice Guidance on Planning and Noise (May 2017)

7.0 Comment and Analysis

7.0.1 The key considerations arising from this proposal are noise, amenity and the imposition of planning conditions that meet the tests set out in the National Planning Policy Framework.

7.1 Background to the application

7.1.1 Planning permission was granted on 27 February 2017 for the phased change of use of the Waring and Gillow's building to student accommodation. A number of conditions were imposed on the consent, including two in relation to noise (conditions 17 and 18):

17: The building should be constructed in accordance with the specification as contained within PDA's Noise Report ECE/8885/2011/03 and shall provide sound insulation against externally generated noise so as not to exceed 47dB Leq at 63Hz and 41dB Leq at 125Hz within bedrooms and 52dB Leq at 63Hz and 46dB Leq at 125 Hz within living rooms with windows shut and other means of ventilation provided.

18: To ensure that the predicted noise levels are achieved within the living and bedroom areas of the building for each phase of the development (identified as phase 1 and 2 on the approved plans), pre-occupation noise monitoring shall be undertaken within the building in accordance with a methodology to be agreed with the local planning authority, and no occupation of the building for each phase shall occur until such time the pre-occupation monitoring has been submitted to, and approved in writing by the local planning authority. In the event the scheme exceeds the predicted noise levels as contained within condition 17, details of improved acoustic mitigation shall be agreed in writing with the local planning authority, with the approved details installed prior to further monitoring. Each phase of the building shall only be occupied when the local planning authority is satisfied that the development meets the requirements of the condition 17.

7.1.2 The applicant is not wishing to vary condition 17, but requests that condition 18 is removed. Condition 17 essentially sets out the limits and the works (such as the glazing specifications as documented in the applicant's noise assessment) that are required to enable the noise limits to be met. Condition 18 was imposed as a result of the development being on the limit of technical capability. Whilst there was confidence that the scheme could work from a noise perspective it was considered in this instance there was exceptional circumstances to include condition 18.

7.1.3 Planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. The National Planning Practice Guide (NPPG) expands on this and states that conditions which place unjustifiable and disproportionate financial burdens on an applicant will fail the test of

reasonableness. The guidance also states that conditions can enable development proposals to proceed where it would otherwise have been necessary to refuse planning permission. This planning application is made under Section 73 of the Town and Country Planning Act, and the effect of this application would be the granting of a new planning permission (or a refusal), sitting alongside the original permission, which would remain intact and un-amended.

- 7.1.4 Noise was examined in significant detail during the application process for planning permission 16/00274/FUL and also within the report to Planning Committee. Whilst no objection was eventually raised by the Council's Environmental Health Officer this was on the proviso that a pre-occupation condition was attached to any successful grant of planning permission. The scheme was presented to Planning Committee on 12 December 2016 and the recommendation was supported by Members.

7.2 Case for the Applicant

- 7.2.1 The applicant considers the condition is not necessary as condition 17 fulfils the role of ensuring that the noise limits are met, which is a tried and tested approach. They also raise concerns that there is no policy basis for requesting the condition (given that the Local Planning Authority sought to utilise guidance from Manchester City Council).

- 7.2.2 The applicant had raised concern with the use of a pre-occupation condition during the application process, but did not raise the issue when the report to Committee was published (which included the condition), nor during Committee (oral) presentations. As part of the submitted supporting information the applicant has provided two letters from lending institutions to demonstrate that funding the scheme with condition 18 in place is not deliverable and that the condition has prevented bank funding. These letters do indeed state this, although they also highlight that condition 17 presents a similar issue to them funding the scheme (but the applicant is not applying to remove this condition). Notwithstanding this, Officers have no reason to dispute the contents of the supporting letters from the lending institutions. Financial constraints on the viability of a development are capable of being a material consideration in the determination of planning applications and some weight are attached to these.

- 7.2.3 The applicant contends that it would not be appropriate to include a pre-occupation planning condition. Manchester City Council guidance (which the Local Planning Authority used in determining this planning application) advocates the use of pre-occupation conditions. The Case Officer has discussed the issue with Manchester City Council and they have stated that where there are complex noise issues (such as in the case of low frequency noise) it is likely that post completion testing and reporting will be required. It is worthy of note that one of the letters received from one of the lending institutions discusses the potential for a completion certificate to be issued to demonstrate that all the mitigation works have been carried out.

7.3 Case for Objectors, including Lancaster University Students Union (LUSU)

- 7.3.1 LUSU and many of Lancaster University students are understandably concerned regarding this planning application and maintain that the condition is required to protect the interests of the Sugarhouse Nightclub, together with the health and wellbeing of the students. The principal condition (condition 17) sets out the noise limits that need to be met, and the applicant has stated that they have no reservations with how this condition is worded (this is the condition which protects the amenity of future occupiers). As with the previous application there have been hundreds of objections lodged (predominately by members of the students union) concerned that this development could jeopardise the future vitality of the Sugarhouse Nightclub. The concerns were given considerable weight in the determination of the previous application, and the same applies here.

- 7.3.2 LUSU considers that the condition was necessary, reasonable and an effective means of ensuring the noise impacts of the proposed development are mitigated. The student union also considers, in the absence of a deed of easement, that the condition was evidently considered to be necessary and reasonable. LUSU has stated that they are not opposed to positive regeneration in the city centre (this is good for the city and also for students), but this cannot be at the expense of a well-established business that has long contributed to Lancaster's night-time economy and is vital to the ongoing success of the University.

7.4 Consideration by the Local Planning Authority and Counsel Opinion

7.4.1 The original planning application was, as Members will recall, a contentious one to determine, with a number of technical reports informing the recommendation. The issue of noise was central to the application, and was a borderline issue. Aside from the statutory consultees, officers sought advice from independent noise consultants. Additionally, officers also enlisted a multi-agency consultancy to review the Council's approach to testing the noise assessment (akin to an audit of the process). The planning decision as therefore reached following a detailed and logical process. Since the receipt of the current application (and the planning appeal), Officers considered that it would be prudent to seek Counsel's opinion regarding the merits of the applicant's submissions (to remove condition 18). The legal advice that was sought centred on whether condition 18 met the relevant tests contained in the NPPF. Advice was taken from Mr Anthony Gill at Kings Chambers (August 2017) and therefore significant weight has to be attached to this advice.

7.4.2 Counsel's opinion has highlighted that whilst condition 18 may not be '*Wednesbury unreasonable*' (which is case law that sets out the standard of unreasonableness) it could still be considered contrary to the guidance within the NPPG, in imposing an unjustifiable or disproportionate financial burden on the applicant, as the development could result in a scheme that is unusable. Officers note this advice, though are mindful that the same could be said of condition 17. The below table is an extract from the NPPG's Key Questions document:

Test	Key Questions
Relevant to the development to be permitted	<ul style="list-style-type: none">• Does the condition fairly and reasonably relate to the development to be permitted?• It is not sufficient that a condition is related to planning objectives: it must also be justified by the nature or impact of the development permitted.• A condition cannot be imposed in order to remedy a pre-existing problem or issue not created by the proposed development.

7.4.3 It is considered that the condition meets the first two criteria as noted above, but due to the nature of the Sugarhouse and its operations there is an argument to suggest that the condition is imposed to remedy a pre-existing issue, and therefore the condition is, at least in part, not relevant to the development permitted. This is a point that has been highlighted via Counsel's opinion.

7.4.4 The Local Planning Authority looks to work proactively with applicants and agents on all development matters, but it could be said that rather than imposing the pre-occupation condition, Officers could have recommended refusal of the scheme given the uncertainty with respect to noise. Notwithstanding this, NPPG is clear that Local Planning Authorities should look for solutions rather than problems, and furthermore guidance is clear that planning conditions can be used to allow development proposals to proceed where it would have been otherwise necessary to refuse planning permission. Therefore, it is considered that Officers took a pragmatic view given the scheme would bring a significant Listed Building back into use and this weighed heavy in the planning balance. However that balance also concluded, as a result of the technical reports, that noise would not cause a loss of amenity for future occupiers of the units.

7.4.5 Officers can fully understand the concerns raised by LUSU. The Sugarhouse is a very popular venue with Lancaster University students. The fact that the University has very recently been named as the University of the Year by the Times and the Sunday Times Good University Guide 2018 only serves as a reminder as to the substantial contribution that University life brings to the city. Notwithstanding the objections to the planning application, the original Committee Report noted that the neighbouring land uses do have a part to play in ensuring that their use of their land does not compromise local or residential amenity. In other words, the Sugarhouse has a role to play in mitigating its noise emissions. What has to be stressed, however, is that there is nothing currently before Officers to state that the noise limits set out cannot be achieved.

7.4.6 The Environmental Health Officer initially objected to the removal of the planning condition (this was prior to Counsel's Opinion and the suggested re-worded planning condition). They now consider that the amended condition will offer a satisfactory level of control and re-assurance that the internal noise limits can be achieved. No objection is now raised. Counsel acknowledged that the Local

Planning Authority worked proactively with the developer to try to find a solution to the issue (as national planning guidance expects it to do), and it is considered that as part of this application the same approach has been taken.

7.4.7 The situation is no less difficult than it was in December 2016. However Counsel's Opinion persuades the local planning authority that the status quo – the imposition of condition 18 - is not a viable option. As a consequence, rather than accepting the removal of condition 18, Officers have been working to see if a different style of condition may still offer some post-completion recording that would be capable of meeting the 6 tests, and would be capable of surviving challenge from either party. Officers have been in discussions with Manchester City Council, who utilise a similar planning condition to that which is now recommended to Members. This condition is also consistent with the advice contained within one of the lending institution letters submitted by the applicant. The condition requires a report/certification to be provided to ensure that the measures stipulated within the applicant's noise report are carried out. What it doesn't do is require pre-occupation noise monitoring or require improved acoustic mitigation if the noise levels exceed those set out in condition 17. However the effect of the proposed new Condition 18 would be to prevent occupation until the post-completion report has been approved. Like any planning condition, if a development breaches the matters that are conditioned, then a Breach of Condition notice can be considered to ensure compliance with the condition.

7.4.8 The applicant is amenable to such a condition being attached to any planning permission.

7.5 Other Issues

7.5.1 Members may be aware that a nearby building (St Leonard's House) was granted planning permission earlier this year (Ref: 16/01155/FUL), with the same condition imposed that is the subject of this Section 73 application. The methodology for undertaking the pre-occupation monitoring has been agreed between the parties and the condition was partially discharged in July 2017. The development at St Leonard's House has yet to commence. However, they are very different projects insofar as the St Leonard's application is a change of use application, as opposed to the Gillow's development which involves a significant new glass rear façade.

8.0 Planning Obligations

8.1 There are no planning obligations to consider as part of this proposal.

9.0 Conclusions

9.1 Noise is a complex matter, and it is fair to suggest that Members faced a challenging decision on the original application in December 2016. However, the decision taken was based on no objection from Environmental Health Officers, an independent review by consultants and an audit of the process by a different consultancy. Two conditions to control noise (17 and 18) were imposed. Counsel's opinion has been sought in relation to the current application, and this opinion demonstrates that whilst condition 18 may not be Wednesbury unreasonable, it does appear to impose an unjustifiable or disproportionate financial burden on the applicant. The applicant's lending institution letters echoes this stance. So whilst condition 18 cannot survive in its current form on this particular scheme, it is proposed to vary the condition to require a post-completion report to ensure that the mitigation works as documented in the approved noise report are carried out. Liaison has occurred with the applicant's agent in terms of devising a condition that gives some comfort that the variation of the condition will be reasonable, and agreement has been reached. Given the circumstances of the case as defined by Counsel's Opinion, it is recommended that condition 18 be varied (but all other planning conditions, including condition 17 relating to noise limits) remain.

Recommendation

That condition 18 on planning permission 16/00274/FUL **BE VARIED** as follows (all other conditions shall remain in force as imposed on planning permission 16/00274/FUL):

18. No part of the development hereby permitted shall be occupied or brought into use until a post-completion report has been submitted to, and approved in writing by, the Local Planning Authority that evidences and confirms that all of the works set out in the approved noise report (PDA Noise Report ECE/8885/2011/03) have been fully and appropriately installed.

Article 35, Town and Country Planning (Development Management Procedure) (England) Order 2015

In accordance with the above legislation, the City Council can confirm the following:

Lancaster City Council has made the decision in a positive and proactive way to foster the delivery of sustainable development, working proactively with the applicant to secure development that improves the economic, social and environmental conditions of the area. The decision has been taken having had regard to the impact of development, and in particular to the relevant policies contained in the Development Plan, as presented in full in the officer report, and to all relevant material planning considerations, including the National Planning Policy Framework, National Planning Practice Guidance and relevant Supplementary Planning Documents/ Guidance.

Background Papers

None