



London Borough of Camden  
Planning Advice and Information Services  
2<sup>nd</sup> Floor, 5 Pancras Street  
c/o Town Hall  
Judd Street  
London  
WC1H 9JE

13 June 2016

Dear Sirs

**Application Number 2016/0091/P – Appeal against refusal of 2016/0091/P- prior approval for change of use to 16 flats.**

We refer to the above mentioned planning application in relation to the proposed conversion of premises at 1A Highgate Road, London NW5 1JY (the "**Building**"), a site which abuts the site of the Forum Kentish Town, a venue owned by Academy Music Group Limited ("**AMG**").

IDM Properties (the "**Applicant**") has applied for planning permission under application number 2016/1482/P (the "**Application**") to change the use of the Building and create 4 office units and 9 Residential Units. The warehouse is currently derelict after operating as a warehouse and service area for the Samuels Piano restoration business.

Consultation between the developers of the Building and local residents commenced in December 2015 in preparation for a previous application 2016/0091/P which was refused. No notices have been placed near or around the Building alerting members of the public and local residents to the new Application having been submitted.

As Tenants of the Forum Kentish Town (the "**Venue**"), we strongly object to this Application. The grounds of our objection are as follows.

The Venue has operated from the same site since the 1980's and prior to the Venue being used as a live music venue, it had been used as a cinema operated by ABC group. The building was built in 1934 and designed by the leading architect of the time, John Stanley Coombe Beard and is a grade 2 listed building of great historical importance. The Venue is licensed with The London Borough of Camden Council to carry out licensable activities from 11:00am until 2:00am the following morning from Monday to Saturday, and from 11am to 00:00am the following morning on Sundays. There are 150 forecasted shows for the calendar year 2016. The licensed auditorium capacity is 2,300, which includes workers and performers. The style of shows performed at the Venue is varied. Contemporary artist concerts such as Nathaniel Rateliff, BBC Radio and TV, Slaves, Daughter, Haim, The Killers and comedy shows such as performances by Nick Helm regularly take place. Additionally, the Venue holds club, awards ceremonies, charity events and private parties. The average capacity forecast for the current year is 75% and approximately 40% of events are sell outs. We expect the number of shows performing at this level of business to increase.

AMG's property is directly adjacent to the Building. The Venue itself is approximately 12 metres away from the Building. The main auditorium wall is the side of the Venue closest to the Building, which means that the loudest part of the Venue is the part closest to the potential residents. Whilst most shows tend to finish no later than 11.00pm, which in itself will severely affect the occupants of the proposed flats, we are concerned that our ability to use the Venue until its current terminal licensing hour of 2:00am between Monday and Saturday and 00:00am on Sunday would be severely compromised in the future by the inevitable complaints from occupiers of the flats. Furthermore the venue is permitted to extend its licensable hours 6 times in a calendar year on a Friday to Saturday until 6:00am, 6 times in a calendar year on Saturday to Sunday until 4:00am and until 2:00am on bank holiday Mondays extended from the previous Sunday licensed activity. Additionally, stage sets, lights and sound equipment are loaded in and out of the Venue via the loading bar and parking yard. The dock door is located 12 metres from the Building. It is usually used between 8:00am and 3:00am, though is occasionally used earlier and later. This means that noise will go on into the early hours of the morning on a regular basis.

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The parking yard is located behind Venue's main auditorium and the load in bay. The service yard is used to unload equipment before it is taken into the building through the load in bay and to load equipment to be taken away after a show. The service yard generates a significant amount of noise due to vehicle movement, flight cases and equipment being moved and voices. The effect is compounded by the fact that all of this activity is required to take place outside, rather than inside the Venue.

The service yard also contains the Venue's industrial waste compactor. This is a mechanical crusher which operates between 11:00am and 06:00am. It generates a significant amount of noise and would have a direct impact on the potential residents due to the hours it operates and the volume of noise it generates. It is possible to use the waste compactor during the daytime; however, this would require leaving approximately 30 – 50 large bags of rubbish in the service yard overnight and then generating a significant volume of noise during the daytime which would adversely impact the potential residents.

The report issued by Sound Advice Acoustics Ltd for the proposed residential development at 1A Highgate Road, London does not take into account noise emanating from the Kentish Town Forum live music venue which is located in close proximity to the proposed site. It is therefore not known whether the venue will have an impact on any incoming residents in the development. Hence, GSAD are of the opinion that the development contravenes the NPPF with regard to existing businesses. The relevant excerpt from the NPPF below states that this is not acceptable and the noise levels should be assessed and mitigation provided to ensure that any existing businesses are not effected.

- The potential effect of a new residential development being located close to an existing business that gives rise to noise should be carefully considered. This is because existing noise levels from the business even if intermittent (for example, a live music venue) may be regarded as unacceptable by the new residents and subject to enforcement action. To help avoid such instances, appropriate mitigation should be considered, including optimising the sound insulation provided by the new development's building envelope. In the case of an established business, the policy set out in the third bullet of paragraph 123 of the Framework should be followed.
- Paragraph 123 point 3 states –
  - Planning policies and decisions should aim to recognise that development will often create some noise and existing businesses wanting to develop in continuance of their business should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established;<sup>28</sup>

As a matter of law, the legitimate concerns of owners and occupiers of existing buildings are properly matters which the planning authority should take into consideration when determining applications of this nature. We would also refer you to legal authorities in assessing whether the protection of purely private interests can be relevant as a material consideration. In particular the case of *RMC Management Services Limited -v- The Secretary of State for Environment* 1972 222 EG 1593 where permission was refused for a ready-mix concrete plant on a site adjacent to higher precision engineering plant requiring especially clean air. The High Court case affirmed the dictum of Cooke J in *Stringer -v- Minister of Housing and Local Government* (1970 1WLR1281). The Judge said "it seems to be that in considering an appeal the Minister is entitled to ask himself whether the proposed development is compatible with the proper and desirable use of other land in the area". He also said, "The public interest as I see it may require that the interests of individual occupiers should be considered. The protection of the interests of individual occupiers is one aspect and an important one of the public interest as a whole. The distinction between public and private interest appears to me to be a false distinction in this context".

We would also draw your attention to a High Court case, which is relevant to the issues involved here. This is *R (on the Application of Luminar Leisure Limited) -v- The First Secretary of State* 2006 EWHC 2981 before Mr Justice Sullivan. The claimant, Luminar, operated a nightclub in premises next door to a proposed residential development at the site in Windsor. At the planning appeal the inspector accepted that the issue of noise was crucial and one of the key issues was whether the nightclub would impair the peace and quiet that future residents might reasonably expect to enjoy and as a result would unreasonably hamper the future operation as a nightclub.

The issue in the High Court case was whether the planning inspector had correctly identified the issues and in particular whether he had erred in law in not taking into account the possible loss of later opening hours which would occur if the development went ahead. The inspector recognised that he had to decide whether it was possible to strike an acceptable balance between ensuring the peace and quiet of future residents and not

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unreasonably hampering the future operation of the claimant's club. On the facts it was found that it would not. The key point of the case is that it was clearly accepted by the planning inspector and by the High Court that the effect of the club was a material consideration in the determination of the appeal.

We would ask that you refer this letter to your own legal department so that they are aware of our involvement and, the nature of the issues that we are raising.

The task of the planning authority is to balance the considerations of the Applicant for the proposed development against the interests of existing occupiers. In this case we would argue that settled planning case law requires that the judgment of the planning authority must come to should fully respect the legitimate business concerns of the operation of the Venue where damage to those concerns may result from the Application being granted.



**Academy Music Group Limited**